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Holdings I LLC, Luxe Broadway, LLC, Luxe La
Cienega, LLC, Luxe Washington, LLC, 1410 5th
Street, LLC, Luxe 1420 5, LLC, Luxe 1440 5,
LLC, NMS Broadway, L.P., and Lincoln Walk
Studios, LP

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

P6 LA MF Holdings SPE, LLC, a limited
liability company; P6 LA MF Holdings I
LLC, a limited liability company; Luxe
Broadway, LLC, a limited liability
company; Luxe La Cienega, LLC, a
limited liability company; Luxe
Washington, LLC, a limited liability
company; 1410 5th Street, LLC, a limited
liability company; Luxe 1420 5, LLC, a
limited liability company; Luxe 1440 5,
LLC, a limited liability company; NMS
Broadway, L.P., a limited partnership; and
Lincoln Walk Studios, LP, a limited
partnership,

Plaintiffs,

vs.

Neil Shekhter, as an individual and as
Trustee of The NMS Family Living Trust
dated September 3, 1991; Margot
Shekhter, as an individual and as Trustee
of The NMS Family Living Trust dated

CASE NO. 2:17-cv-00616

COMPLAINT FOR DAMAGES

September 3, 1991; NMS Properties, Inc.,
a corporation; NMS Capital Partners I,
LLC, a limited liability company; and
Does 1-10,

Defendants.

1 Plaintiffs P6 LA MF Holdings SPE, LLC (“AEW” or “Investor Member”),
2 P6 LA MF Holdings I LLC (“Joint Venture”), Luxe Broadway, LLC, Luxe La
3 Cienega, LLC, Luxe Washington, LLC, 1410 5th Street, LLC, Luxe 1420 5, LLC,
4 Luxe 1440 5, LLC, NMS Broadway, L.P., and Lincoln Walk Studios, LP (collectively,
5 “Plaintiffs”), by and through their counsel of record, Gibson, Dunn & Crutcher LLP
6 (“Gibson Dunn”), for their Complaint against Defendants Neil Shekhter (“Shekhter”),
7 Margot Shekhter, NMS Properties, Inc. (“NMS Properties”), and NMS Capital
8 Partners I, LLC (“NMS Capital” or “Operating Member”) (collectively, “Defendants”
9 or “NMS”) hereby allege:

10 NATURE OF THE ACTION

11 1. Since at least 2013 and continuing to the present, defendant Neil Shekhter
12 and his co-defendants and co-conspirators have conspired to injure Plaintiffs through a
13 fraudulent and extortionate scheme designed to pressure AEW into selling its interest
14 in the Joint Venture formed between AEW and NMS Capital to Shekhter/NMS (the
15 “Joint Venture”), against AEW’s wishes and at a price many millions of dollars below
16 what it was worth. The outrageous and illegal conduct of Shekhter and his co-
17 defendants and co-conspirators includes forging documents and passing them off to
18 banks, courts and third parties, and subjecting Plaintiffs to a multi-year campaign of
19 harassment that has not ended to this day, even after the Los Angeles Superior Court in
20 the *Lincoln Studios* case expressly held that Defendants had engaged in forgery,
21 perjury and the massive destruction of evidence in violation of multiple court orders
22 (the “Lincoln Studios Litigation”).

23 2. Neil Shekhter is the CEO of NMS Properties; he is, along with his wife,
24 Margot Shekhter, a Trustee of The NMS Family Living Trust dated September 3, 1991
25 (2000 Restatement) (the “Trust”); and he is the manager of NMS Capital Partners,
26 LLC, the sole member and manager of NMS Capital Partners I, LLC (collectively,
27 “NMS”). NMS owns, manages and develops residential properties throughout Los
28

1 Angeles. Currently, NMS claims to own or manage over 75 properties in Los Angeles
2 County, which house over 2,000 apartments and over 4,000 tenants.

3 3. The global financial crisis hit many real estate developers hard and Neil
4 Shekhter was no exception. In 2010, with multiple properties having deteriorated in
5 value and facing loan maturities, Shekhter sought to enter into a joint venture that
6 would not only save properties held for development owned by companies he
7 controlled from imminent foreclosure, but would pay for the development of those
8 properties into apartment projects. Shekhter negotiated a joint venture agreement on
9 behalf of NMS Capital to form a joint venture (the “Joint Venture”) between NMS
10 Capital and AEW, an affiliate of AEW Partners VI, L.P. (“AEW P6”), a real estate
11 private equity fund advised by AEW Capital Management, L.P. (“AEW CM”).¹

12 4. The purpose of the Joint Venture was to acquire, develop and operate
13 residential properties in Los Angeles. The Joint Venture—of which AEW and NMS
14 Capital were the only members—ultimately acquired nine multi-unit residential
15 apartment buildings in Los Angeles (the “Joint Venture Properties” or “Properties,”
16 each a “Property”). As the Joint Venture developed the Properties for residential use,
17 their value rapidly increased.

18 5. The Joint Venture Agreement (“JVA”), signed by the parties in September
19 2010, contained a waterfall provision that set forth, absent a default by NMS as
20 defined by the JVA, the order in which distributions of Joint Venture income could be
21 distributed by the Joint Venture at the direction of AEW, the Investor Member,
22 although the Investor Member maintained the sole discretion to determine whether any
23 distributions would be made and if so in what amount. The Investor Member was
24 entitled to receive all of its capital contributions and an agreed upon rate of return on
25

26
27 ¹ AEW CM is a real estate investment advisor. It provides investment management
28 and related services to institutional investors who seek to benefit from real estate as
an investment asset. Its clients consist primarily of retirement funds, including
retirement funds for health care workers, teachers, police officers, and firefighters.

1 its investment before NMS would receive any distributions. The waterfall provision
2 also included a “cap” on the Investor Member’s total return on its investment in the
3 Joint Venture if the Investor Member received through Joint Venture distributions all
4 of its capital back plus a 24% return on its investment in less than five years from the
5 execution of the JVA in September 2010—something that was totally within the
6 Investor Member’s control as it had the sole discretion to determine whether to sell all
7 or any portion of the Joint Venture’s portfolio and whether to cause the Joint Venture
8 to make any distributions.

9 6. The JVA did not contain a mechanism for either party to unilaterally “buy
10 out” the other’s interest in the Joint Venture. It did contain, however, a “Buy/Sell”
11 mechanism (defined in the JVA as “the Buy Out Rights”) that would allow either
12 party, after five years from the execution of the JVA, to trigger the Buy/Sell provisions
13 by issuing a Buy/Sell Offer Notice identifying a price at which it would agree to be a
14 buyer of the other member’s interest in the Joint Venture or the seller of its own
15 interest in the Joint Venture to the other member. Once triggered, the other member
16 would be able to decide whether to act as the buyer or the seller at that price. Because
17 the Buy/Sell provisions could not be triggered until at least five years after execution
18 of the JVA, NMS had no right to trigger an “exit” event before the five-year mark.
19 The Investor Member, however, could trigger the sale of the portfolio at any time in its
20 sole discretion. These were the terms that AEW required when negotiating the JVA
21 and these were the terms that the parties agreed to and which were set forth in the
22 executed JVA.

23 7. In 2013, however, with real estate values rebounding and the real estate
24 market stabilizing, Shekhter began to regret the deal he made on behalf of NMS in
25 2010. He wanted to be able to force AEW to sell its interest in the Joint Venture to
26 him prior to the five-year mark in order to “cap” AEW’s return on its investment and
27 steal any gains above that amount for himself and his co-conspirators. Shekhter asked
28 AEW to voluntarily sell him its interest in June 2013, less than three years into the

1 Joint Venture, and when he realized that AEW would not voluntarily sell its interest
2 and give up potentially tens of millions of dollars to which it was entitled, Shekhter
3 and his co-conspirators set about to defraud and/or extort AEW into selling its interest
4 to Shekhter before the five-year date could be reached.

5 8. Shekhter forged a version of the JVA (which he would later call “Version
6 2” of the JVA) that altered the Buy/Sell provision so that it would look like it could be
7 triggered in three years rather than the five years that the parties had agreed to.
8 Specifically, Shekhter and his co-conspirators used PDF overwriting software to alter
9 the number “5” and the word “five” that existed in Section 11.1(a)(i) of the executed
10 JVA into the number “3” and the word “three.” Shekhter first emailed the forged
11 “Version 2” to KeyBank, a federally insured bank that acted as one of the Joint
12 Venture’s lenders, telling the bank that it was the only JVA he had ever “executed,”
13 and then he had NMS’ in-house counsel email a copy of the forgery to AEW’s counsel
14 on July 19, 2013, claiming for the first time that “Version 2” was the document that
15 Shekhter had allegedly signed in September 2010. The aim of Shekhter and his co-
16 conspirators was to paralyze AEW and, ultimately, paralyze the Joint Venture’s banks,
17 sowing confusion among the banks as to whether there ever was a valid JVA between
18 NMS and AEW and if so whether it was “Version 2” or the copies that had been
19 signed and circulated to the banks over the prior three years. Shekhter and his co-
20 conspirators believed that in order to avoid defaulting on Joint Venture loans, which
21 would start to come due not long after the forgery was created, and to avoid harming
22 its reputation in the marketplace, AEW would be forced to sell Shekhter its interest in
23 the Joint Venture long before the five-year mark and at a substantially reduced price.

24 9. When AEW did not immediately cave to Shekhter’s scheme, however,
25 Shekhter and his co-conspirators began a multi-faceted and multi-year campaign of
26 harassment of AEW, its employees and affiliates, its counsel, its investors, its auditors,
27 and anyone else that dared to do business with AEW in connection with the Joint
28 Venture. Defendants initially sued AEW’s former deal counsel, DLA Piper and

1 Seyfarth Shaw, in Los Angeles Superior Court in what became known as the Lincoln
2 Studios Litigation. Defendants alleged that AEW's counsel were actually NMS'
3 counsel and negligently drafted the JVA in a manner that obscured NMS' purported
4 (but actually non-existent) right to force AEW to sell its interest to NMS in three years.
5 Interestingly, however, Defendants did not make any mention of the "Version 2"
6 forgery of the JVA in their initial complaints against either AEW's former deal counsel
7 or NMS' own former deal counsel, whom they also sued. But in April 2015,
8 Defendants amended their complaint in the Lincoln Studios Litigation to expressly
9 reference and rely upon the "Version 2" forgery and name as defendants both AEW
10 and most of the Plaintiffs in the instant action.

11 10. The Lincoln Studios Litigation was a sham lawsuit directed and funded by
12 Shekhter for the purpose of furthering the fraudulent, extortionate and criminal scheme
13 carried out by Shekhter and his co-conspirators. Not only were Defendants attempting
14 to defraud the court and extort AEW by relying on a known forgery but they sought to
15 intimidate Plaintiffs by seeking almost \$12 billion in alleged damages.

16 11. Defendants also forged and fabricated a Property Management Agreement
17 ("PMA") for one of the Properties by fraudulently changing a key term in the PMA
18 from "30 days" to "60 days" in an attempt to prevent NMS Properties' removal as the
19 property manager of the Properties. Defendants knowingly submitted the forged and
20 fabricated PMA to the court and made false statements to the court about its origins.

21 12. In addition to the sham Lincoln Studios Litigation, Defendants have also
22 filed seven other lawsuits against various Plaintiffs arising out of the Joint Venture
23 and, in each, continue to make false and misleading representations based on the
24 forged documents and continue to dispute Plaintiffs' rights under the JVA based on
25 false allegations. This never-ending series of lawsuits were filed against Plaintiffs to
26 further Defendants' fraudulent and extortionate scheme by attempting to prevent
27 Plaintiffs from asserting clear title to the Properties, re-financing loans that went into
28

1 default and from selling the Properties to anyone other than Defendants—even after
2 Plaintiffs prevailed in the Lincoln Studios Litigation.

3 13. In furtherance of and as yet another element to the extortionate scheme,
4 Defendants have engaged in a long-running campaign of harassment and intimidation.
5 For years, Shekhter, with Defendants’ knowledge and approval, has continuously
6 unleashed hundreds if not thousands of false and misleading emails to representatives
7 of Plaintiffs, third-party lenders, auditors, property managers, title insurance
8 companies, potential buyers, former employees, counsel, and countless others. These
9 emails contained ominous and threatening messages, often flooding recipients’ inboxes
10 in the middle of the night. In some instances, Shekhter forwarded the same threatening
11 emails 10 times or more to the same recipients, many of whom are high- level
12 executives at AEW CM who had no involvement in the transaction, including even
13 AEW CM’s CEO. For instance, on February 19, 2016, Shekhter emailed Samek,
14 copying an AEW executive in Massachusetts as well as two representatives of a third
15 party lender (including one in New York), warning: “***Remember what goes around***
16 ***comes around.*** Goodnight.” (Emphasis added.) These emails—like the forgeries, the
17 perjury, and the sham lawsuits—were intended to (and did) instill fear in Plaintiffs.

18 14. Through their criminal and tortious conduct, Defendants have violated the
19 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 28 U.S.C. § 1961 *et*
20 *seq.*, slandered Plaintiffs’ title to the Properties, converted Plaintiffs’ funds, and have
21 tortiously interfered with Plaintiffs’ contracts and prospective economic advantage. In
22 addition, Defendants Neil and Margot Shekhter have materially breached their
23 obligations under the Undertaking of Principals to indemnify AEW for Defendants’
24 fraud, misrepresentations, willful misconduct, bad faith acts, and misappropriation of
25 funds and property.

26 15. As the direct, proximate, and foreseeable result of Defendants’ tortious
27 and criminal misconduct, Plaintiffs have suffered substantial injuries, including, but
28 not limited to: millions of dollars in legal fees incurred in defending against

Defendants’ extortionate threats, fraudulent misrepresentations and omissions, and sham lawsuits; millions of dollars in costs incurred in mitigating the impact of Defendants’ pervasive misconduct, such as the default interest and fees that Plaintiffs incurred as a result of Defendants’ fraudulent misrepresentations to the Joint Venture’s lender; and tens of millions of dollars in lost sale proceeds. Plaintiffs are entitled to treble damages and attorneys’ fees under the federal RICO laws, and compensatory and punitive damages under California law.

THE PARTIES

A. Plaintiffs

16. Plaintiff P6 LA MF Holdings I LLC (“Joint Venture”) is a Delaware limited liability company. The Joint Venture was created by the Limited Liability Company Agreement for P6 LA MF Holdings I LLC (the “JVA”), dated as of September 8, 2010, which was entered into by AEW and NMS Capital. Prior to November 2016, the Joint Venture owned and controlled nine Properties through eight subsidiary companies (“Subsidiary Companies”) as follows:

Subsidiary Company	Property Address(es)	Property Name
1410 5th Street, LLC	1410 5th Street, Santa Monica, CA 90401	Lido
NMS Broadway, L.P.	829 Broadway, Santa Monica, CA 90401	Quonset
Lincoln Walk Studios, LP	1441 Lincoln Blvd., Santa Monica, CA 90401	Lincoln Walk
Luxe 1420 5, LLC	1420 5th Street, Santa Monica, CA 90401	San Marco
Luxe 1440 5, LLC	1430 5th Street, Santa Monica, CA 90401	Rapallo
Luxe Washington, LLC	9901 Washington Blvd., Los Angeles, CA 90232	Luxe Washington
Luxe Broadway, LLC	1502 Broadway, Santa Monica, CA 90401 1511 15th Street, Santa Monica, CA 90404	Luxe Broadway
Luxe La Cienega, LLC	375 N. La Cienega Blvd., West Hollywood, CA 90048	Luxe La Cienega

1 17. Plaintiff P6 LA MF Holdings SPE, LLC (“AEW” or “Investor Member”)
2 is a Delaware limited liability company. Pursuant to Article 8.1 of the JVA, the
3 Investor Member has the power and authority, exercisable at its sole discretion, to act
4 for the Joint Venture, including the right to commence suit on behalf of and to
5 represent the Joint Venture and the Subsidiary Companies in legal proceedings.

6 18. Plaintiff Luxe Broadway, LLC is a California limited liability company.
7 It is a Subsidiary Company of and wholly owned by the Joint Venture. Luxe
8 Broadway, LLC is the former owner of two properties located at 1502 Broadway,
9 Santa Monica, CA 90404 and 1511 15th Street, Santa Monica, CA 90404.

10 19. Plaintiff Luxe La Cienega, LLC is a California limited liability company.
11 It is a Subsidiary Company of and wholly owned by the Joint Venture. Luxe La
12 Cienega, LLC is the former owner of 375 N. La Cienega Blvd., West Hollywood, CA
13 90048.

14 20. Plaintiff Luxe Washington, LLC is a California limited liability company.
15 It is a Subsidiary Company of and wholly owned by the Joint Venture. Luxe
16 Washington, LLC is the former owner of 9901 Washington Blvd., Los Angeles, CA
17 90232.

18 21. Plaintiff 1410 5th Street, LLC is a California limited liability company. It
19 is a Subsidiary Company of and wholly owned by the Joint Venture. 1410 5th Street,
20 LLC is the former owner of 1410 5th St., Santa Monica, CA 90401.

21 22. Plaintiff 1420 5, LLC is a California limited liability company. It is a
22 Subsidiary Company of and wholly owned by the Joint Venture. 1420 5, LLC is the
23 former owner of 1420 5th St., Santa Monica, CA 90401.

24 23. Plaintiff 1440 5, LLC is a California limited liability company. It is a
25 Subsidiary Company of and wholly owned by the Joint Venture. 1440 5, LLC is the
26 former owner of 1430 5th Street, Santa Monica, CA 90401.

1 24. Plaintiff NMS Broadway, L.P. is a California limited partnership. It is a
2 Subsidiary Company of and wholly owned by the Joint Venture. NMS Broadway, L.P.
3 is the former owner of 829 Broadway, Santa Monica, CA 90401.

4 25. Plaintiff Lincoln Walk Studios, LP is a California limited partnership. It
5 is a Subsidiary Company of and wholly owned by the Joint Venture. Lincoln Walk
6 Studios, LP is the former owner of 1447 Lincoln Blvd., Santa Monica, CA 90401.

7 26. All of the Subsidiary Companies are controlled by the Joint Venture and
8 by the Investor Member.

9 **B. Defendants**

10 27. Defendant Neil Shekhter is, upon information and belief, an individual
11 residing in Los Angeles County, California, with an intention to reside there
12 indefinitely, and is therefore a citizen of the State of California. Exercise of
13 jurisdiction over him is reasonable and proper in this District for the reasons set forth
14 in paragraph 41, *infra*. Shekhter is, and at all relevant times has been, the Chief
15 Executive Officer of NMS Properties, Inc. (“NMS Properties”) and the manager of
16 NMS Capital and NMS Capital Partners, LLC, the sole member of NMS Capital.
17 Shekhter and his wife, Margot Shekhter, are the Trustees of The NMS Family Living
18 Trust dated September 3, 1991 (2000 Restatement).

19 28. Defendant Margot Shekhter is, upon information and belief, an individual
20 residing in Los Angeles County, California, with an intention to reside there
21 indefinitely, and is therefore a citizen of the State of California. Exercise of
22 jurisdiction over her is reasonable and proper in this District for the reasons set forth in
23 paragraph 41, *infra*. Margot Shekhter is, and at all relevant times has been, either the
24 Chief Financial Officer or President of NMS Properties, and has managed the business.

25 29. Defendant NMS Properties, Inc. is, upon information and belief, a
26 California corporation, and is therefore a citizen of the State of California. Exercise of
27 jurisdiction over it is reasonable and proper in this District for the reasons set forth in
28 paragraph 41, *infra*.

1 30. Defendant NMS Capital Partners I, LLC (“NMS Capital” or the former
2 “Operating Member”) is, upon information and belief, a limited liability company
3 organized under the laws of California, and is therefore a citizen of the State of
4 California. Exercise of jurisdiction over it is reasonable and proper in this District for
5 the reasons set forth in paragraph 41, *infra*.

6 31. The true names and capacities, whether corporate, associate, individual, or
7 otherwise of Defendants DOES 1 through 10, inclusive, are unknown to Plaintiffs,
8 which therefore sues said Defendants by such fictitious names. Plaintiffs are informed
9 and believe and thereupon allege that each Defendant designated herein as Doe is
10 responsible in some manner for the events and happenings referred to herein and
11 proximately caused damages to Plaintiffs as alleged herein, either by such Doe
12 Defendant’s own conduct or through the conduct of his, her or its agents, servants,
13 employees, representatives, associates, partners, joint venturers, co-conspirators, or
14 alter egos. Plaintiffs will amend this Complaint to allege their true names and
15 capacities when the same have been ascertained.

16 **C. Non-Party Co-Conspirators**

17 32. Certain other non-party individuals and entities played roles, direct or
18 indirect, in Defendants’ fraudulent and extortionate scheme (collectively, the “Non-
19 Party Co-Conspirators”). Foremost among these individuals and entities are the
20 following:

21 33. Adam Shekhter is, upon information and belief, a resident of the State of
22 California.

23 34. Alan Shekhter is, upon information and belief, a resident of the State of
24 California.

25 35. Enrique Sanchez is, upon information and belief, a resident of the State of
26 California.

27 36. Brian Bowis is, upon information and belief, a resident of the State of
28 California.

1 37. Eddie Valentin is, upon information and belief, a resident of the State of
2 California.

3 38. Louis R. (Skip) Miller (“Miller”) is, upon information and belief, a
4 resident of the State of California, a member of the Bar of the State of California, and a
5 partner in Miller Barondess LLP. Upon information and belief, Miller entered into the
6 conspiracy in or around January 2015.

7 39. Steven Zelig (“Zelig”) is, upon information and belief, a resident of the
8 State of California, a member of the Bar of the State of California, and a shareholder in
9 Brentwood Legal Services, LLP. Upon information and belief, Zelig entered into the
10 conspiracy in or around July 2013.

11 **SUBJECT MATTER JURISDICTION AND VENUE**

12 40. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
13 and 18 U.S.C. § 1964(c). Plaintiffs’ first claim for relief arises under 18 U.S.C. § 1961
14 *et seq.*, as hereinafter more fully appears. Moreover, Plaintiffs’ state law claims arise
15 out of the same case or controversy as its federal law claims, as all claims in this action
16 arise out of a common nucleus of operative facts. Thus, this Court also has
17 supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C.
18 § 1367.

19 41. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 18
20 U.S.C. § 1965(a) because, on information and belief, all Defendants reside and transact
21 their affairs in this District and because a substantial part of the events giving rise to
22 Plaintiffs’ claims occurred in this District.

23 **PERSONAL JURISDICTION**

24 42. Exercise of jurisdiction over Defendant Neil Shekhter is reasonable and
25 proper in this District because Shekhter is a citizen of the State of California and
26 because he conducts extensive business activities within the state. Shekhter is the CEO
27 of NMS Properties and the manager of NMS Capital, both of which are located in and
28 do business in the State of California. Through his activities in California, Shekhter

1 has served as the ringleader in the enterprise to harm Plaintiffs, working closely with
2 the other Defendants and non-party Co-Conspirators. For Plaintiffs' claims pursuant
3 to 18 U.S.C. § 1962 and California state law, exercise of jurisdiction over Shekhter is
4 proper pursuant to 18 U.S.C. § 1965(a) and California Code of Civil Procedure
5 § 410.10.

6 43. Exercise of jurisdiction over Defendant Margot Shekhter is reasonable
7 and proper in this District because Margot Shekhter is a citizen of the State of
8 California and because she is the President and former CFO of NMS Properties, which
9 is located in and does business in the State of California. Through her activities in
10 California, Margot Shekhter has authorized the filing and prosecution of the sham
11 Lincoln Studios Litigation and purported to verify the authenticity of the forged
12 "Version 2" in the sham Lincoln Studios Litigation. For Plaintiffs' claims pursuant to
13 18 U.S.C. § 1962 and California state law, exercise of jurisdiction over Margot
14 Shekhter is proper pursuant to 18 U.S.C. § 1965(a) and California Code of Civil
15 Procedure § 410.10.

16 44. Exercise of jurisdiction over Defendant NMS Properties is reasonable and
17 proper in this District because it is based in the State of California, is incorporated in
18 the State of California, and does business in the State of California. Through its
19 activities in California, NMS Properties has served as a manager in the enterprise to
20 harm Plaintiffs, working closely with the other Defendants and non-party Co-
21 Conspirators. For Plaintiffs' claims pursuant to 18 U.S.C. § 1962 and California state
22 law, exercise of jurisdiction over NMS Properties is proper pursuant to 18 U.S.C.
23 § 1965(a) and California Code of Civil Procedure § 410.10.

24 45. Exercise of jurisdiction over Defendant NMS Capital is reasonable and
25 proper in this District because it is based in the State of California, is organized under
26 the laws of the State of California, and does business in the State of California.
27 Through its activities in California, NMS Capital has served as a manager in the
28 enterprise to harm Plaintiffs, working closely with the other Defendants and Non-Party

1 Co-Conspirators. For Plaintiffs' claims for violations of 18 U.S.C. § 1962 and
2 California state law, exercise of jurisdiction over NMS Capital is proper pursuant to 18
3 U.S.C. § 1965(a) and California Code of Civil Procedure § 410.10.

4 **FACTUAL BASIS FOR CLAIMS**

5 **A. The Parties Discuss Entering into a Potential Joint Venture**

6 46. In early 2010, during the depths of the real estate crash, Neil Shekhter of
7 NMS Capital and NMS Properties and Eric Samek of AEW began discussing a
8 potential real estate joint venture to acquire and develop properties in an otherwise
9 depressed Los Angeles real estate market lacking in available capital. Among other
10 things, the parties discussed an arrangement whereby an affiliate of AEW would
11 provide capital for and exercise control over the joint venture while NMS (run and
12 operated by Neil Shekhter) would manage the prospective joint venture properties day-
13 to-day subject to the joint venture agreement and an agreed upon form property
14 management agreement. At the time, both parties were represented by skilled and able
15 counsel—DLA Piper, LLC (“DLA”) for AEW and Sheldon Chernove (“Chernove”)
16 and Schultz & Wright, LLP (“S&W”) for NMS Properties—and all aspects of the joint
17 venture agreement were heavily negotiated in arm’s-length discussions.

18 47. On or about May 26, 2010, after some negotiations, AEW P6 and NMS
19 Properties entered into a non-binding Term Sheet outlining the general terms and
20 conditions upon which a joint venture would be formed and invest in the acquisition
21 and development of multi-family properties in Los Angeles, California.

22 48. The non-binding Term Sheet included a potential “Buy/Sell” provision,
23 by which either member of the proposed joint venture could “trigger a Buy/Sell for
24 individual properties at the later of (i) three years from the acquisition of the property
25 for which the Buy/Sell is being triggered or (ii) the stabilization of the property for
26 which the Buy/Sell is being triggered.” The Term Sheet, as drafted, reflected the
27 parties’ then-existing understanding regarding the general parameters of a future
28

1 agreement, but expressly stated that it was not legally binding, a point that Neil
2 Shekhter reiterated when he returned his executed copy to AEW.

3 **B. The Parties Negotiate and Draft the JVA**

4 49. On or about July 7, 2010, DLA circulated the first draft of the joint
5 venture agreement to the parties and their counsel (the “July 7 Draft”). The July 7
6 Draft included a Buy/Sell provision in Article 11 (the “Buy/Sell Provision” or the
7 “Buy/Sell”), which provided, in relevant part, that “[a]t any time after the later to occur
8 of (i) twelve (12) months after the expiration of the Investment Period, and (ii) the last
9 Property purchased by the Company or any Subsidiary Company [of the Joint Venture]
10 prior to the end of the Investment Period has achieved a stabilized occupancy of 95%,
11 either the Operating Member or the Investor Member may give a Buy/Sell Offer
12 Notice.” Twelve months after the Investment Period was equal to three years based on
13 the two-year Investment Period that was contemplated in the July 7 Draft, and
14 “stabilization” was defined as 95% occupancy at the last Property acquired by the Joint
15 Venture. This was the formula being discussed to determine when the Buy/Sell rights
16 could be triggered; under the formula then contemplated, the only way the Buy/Sell
17 could be triggered in three years was if the last acquired Property was already 95%
18 occupied before the three-year anniversary after the execution of the joint venture
19 agreement. To put this into perspective, the last acquired Joint Venture Property still
20 had not reached 95% occupancy five years after the JVA was executed. The Buy/Sell
21 Provision was defined in the draft JVA, and ultimately in the executed JVA, as “the
22 Buy Out Rights.”

23 50. The Buy/Sell Provision that the parties ultimately agreed to did not
24 include the formula contained in the July 7 Draft and non-binding Term Sheet.
25 Instead, as set forth below, the parties agreed that the Buy/Sell could not be triggered
26 before the five-year anniversary after the execution of the JVA. However, while the
27 timing of the Buy/Sell rights changed, the general parameters for the Buy/Sell Offer
28 Notice remained largely the same throughout the negotiations: once a Buy/Sell Offer

1 Notice could be issued, either party could issue the Notice but neither could guarantee
2 it would turn out to be the buyer or the seller. All it could do was trigger the process
3 and name the price at which it would be willing to be a buyer or seller and the other
4 party could determine whether to buy or sell. This Buy/Sell Offer Notice right was the
5 only right ever negotiated or agreed to by which NMS could trigger an exit by one
6 party or the other from the Joint Venture. The Investor Member, AEW, on the other
7 hand, retained the exclusive right to sell the Joint Venture's Properties, in its sole
8 discretion, in every draft of the JVA and in the executed JVA.

9 51. On or about July 28, 2010, Chernove, on behalf of NMS Properties,
10 provided extensive comments and edits to the July 7 Draft of the JVA. In his
11 comments to Article 11, Chernove stated that the Buy/Sell Provision should not be
12 activated at any time *before five years*, writing:

13 **[THIS ENTIRE SECTION NEEDS FURTHER DISCUSSION BUT IT SHOULD**
14 **NOT BE TRIGGERED BEFORE THE EXPIRATION OF THE 5 YEAR**
15 **PERIOD WHEN THE TARGET DISTRIBUTION IS TO BE ACHIEVED].**

16 52. This was consistent with Chernove's comments to Article 6, which related
17 to the timing of distributions. Chernove stated that the final level of the distribution
18 waterfall should be "EFFECTIVE ONLY IF THE 24% IRR and 1.75 x EQUITY IS
19 NOT ACHIEVED WITHIN 60 MONTHS." Chernove's marked-up copy of the July 7
20 Draft was sent by Jim Andersen, then Chief Operating Officer of NMS, to Neil
21 Shekhter, as well as to AEW's Eric Samek, in an email dated July 28, 2010. Chernove
22 later testified under oath that he wrote the comments—requesting that the earliest time
23 for either party to issue a Buy/Sell Offer Notice be changed from the formula to five
24 years—and that there were no typos contained in his comments.

25 53. Around the same time, consistent with Chernove's written comments, Jim
26 Andersen (who participated extensively in the negotiations) called AEW's Jonathan
27 Watson (who also participated in the negotiations) to ask that the Buy/Sell Provision
28 being negotiated be changed to a minimum of five years because NMS was concerned

that it would not be able to compete with AEW in any Buy/Sell if it were triggered before the fifth year.

54. In response to the written and oral requests, AEW agreed to change the Buy/Sell Provision so that it would not be available until five years after execution. On or about August 11, 2010, DLA circulated the next draft of the joint venture agreement (the "August 11 Draft"). The August 11 Draft inserted (in redline) the five-year Buy/Sell Provision NMS Properties requested: "At any time after *five (5) years from the date hereof*, either the Operating Member or the Investor Member may give a Buy/Sell Offer Notice."

Plaintiffs' Requested The 5-Year Buy/Sell Provision In 2010

From: Sheldon Chernove [mailto:schernove@chernovelaw.com]
Sent: Wednesday, July 28, 2010 2:50 PM
To: Jim
Subject: NMS - AEW

Here is the agreement marked with the changes in "track changes" to promote easy reading.

Sheldon B. Chernove, Esq.
Chernove & Associates, Inc.
16027 Ventura Boulevard, Suite 660
Encino, CA 91436
Phone: (818) 377-8102 (direct)
Fax: (818) 377-9132
schernove@chernovelaw.com

ARTICLE 11.

Buy/Sell

11.1 Buy/Sell. ~~[THIS ENTIRE SECTION NEEDS FURTHER DISCUSSION BUT IT SHOULD NOT BE TRIGGERED BEFORE THE EXPIRATION OF THE 5 YEAR PERIOD WHEN THE TARGET DISTRIBUTION IS TO BE ACHIEVED]~~

ARTICLE 11.

BUY/SELL

Buy/Sell

11.1 Buy/Sell.

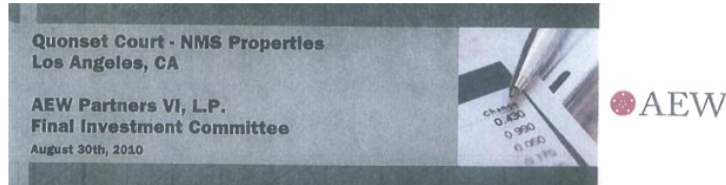
(a) Buy/Sell Offer Notice. The operation of this Section 11.1 may be triggered upon written notice (the "Buy/Sell Offer Notice") at the times and upon the conditions set forth below:

(i) At any time after ~~the later-to-occur of (i) twelve (12) months after the expiration of the Investment Period, and (ii) the last Property purchased by the Company or any Subsidiary Company prior to the end of the Investment Period has achieved a stabilized occupancy of 95%~~ five (5) years from the date hereof, either the Operating Member or the Investor Member may give a Buy/Sell Offer Notice at any time, provided, however, that in no event shall the Operating Member be entitled to give a Buy/Sell Offer Notice at any time after the occurrence of a Removal Event. In addition to the foregoing, if at any time an Event of Default, Removal Event or Incentive Loss Event occurs, the Investor Member may give a Buy/Sell Offer Notice. Notwithstanding the foregoing, neither Member may give a Buy/Sell Offer Notice while any Property is under a contract for sale and the consummation of such sale is pending.

This language remained intact through every subsequent draft of the JVA, and survives to this day in the operative JVA. Indeed, the lead attorney and paralegal working on the transaction at DLA, and who later moved to the law firm of Seyfarth Shaw, both

1 testified under oath that this change was made in response to NMS' requests, as
2 described above. A contemporaneous internal memorandum at AEW also confirmed
3 this change and that it was made at the request of NMS.

4 **August 30, 2010 AEW Memorandum**



- 6
7
8 • Buy/Sell of JV interests can now be triggered after five years only. The previous
9 agreement was the later of 3 years or stabilization. AEW maintains discretion over sale
10 at any time.

11 55. Following the August 11 Draft, the parties circulated four more drafts of
12 the JVA. All four drafts provided for a 5-year Buy/Sell.

13 **C. The Parties Execute the JVA**

14 56. On or about September 8, 2010, the Investor Member and the Operating
15 Member executed the JVA. The JVA contained, in Article 11, the 5-year Buy/Sell
16 Provision described above.

17 **D. Neil and Margot Shekhter Execute the Undertaking of Principals**

18 57. On or about September 8, 2010, concurrent with the execution of the
19 JVA, Neil and Margot Shekhter executed the Undertaking of Principals (as amended,
20 the "Undertaking"). Neil Shekhter executed the Undertaking in his individual capacity
21 and in his capacity as Trustee of the Trust. Margot Shekhter executed the Undertaking
22 in her capacity as Trustee of the Trust. A true and correct copy of the Undertaking as
23 amended is attached as **Exhibit 1** to this Complaint.

24 58. As set forth in the Undertaking, Neil Shekhter and the Trust (collectively,
25 the "Principals") executed and delivered the Undertaking to induce the Investor
26 Member to enter into the JVA and to make substantial capital contributions to the Joint
27 Venture. Indeed, Article 8.21 of the JVA expressly references the Undertaking,
28 underscoring its materiality to the transaction.

1 59. Paragraph 1 (“Indemnity for Bad Acts”) of the Undertaking sets forth the
2 indemnification obligations of the Principals. Specifically, Paragraph 1 provides:

3 The Principal and the Trust (collectively, the “Principals”) agree to
4 indemnify, defend and hold the Company and Investor Member harmless
5 from and against any liability, loss, cost (including reasonable attorney’s
fees) or damages arising from:

6 (a) any fraud, willful misconduct, gross negligence or any intentional
7 misrepresentation of any material fact (including, but not limited to, the
8 representations and warranties set forth on Schedule 2.3(a) to the LLC
9 Agreement) by Operating Member or any Person controlling, controlled
by or under common control with Operating Member (any such Person, a
“Controlled Affiliate”) in connection with the LLC Agreement, the
Company, a Subsidiary Company or with respect to any Property;

10 (b) any misappropriation or embezzlement of funds of the Company or
any Property by Operating Member or any of its Controlled Affiliates;

11 (c) any act of intentional damage, arson or intentional physical waste of or
to the Property by Operating Member or any of its Controlled Affiliates;

12 (d) actions taken, or omitted to be taken, with respect to the Company or
the Property in bad faith on the part of Operating Member or any of its
Controlled Affiliates;

13 (e) Operating Member, the Property Manager or the Developer Manager
14 (as long as they are an Affiliate of Operating Member), a Principals, the
Approved Substitute Principal or any of their respective Affiliates or
15 Related Parties: (1) bringing or participating in, or acting in concert with
others to bring, any voluntary or involuntary bankruptcy, liquidation,
16 receivership or similar proceeding against the Subsidiary Company or the
Company or any Member; (2) being listed as a petitioning creditor in any
such proceeding; or (3) soliciting or causing to be solicited petitioning
creditors for any such proceeding; and/or

17 (f) any Transfer of Operating Member’s interest in the Company or of the
18 Principals’ indirect interest in the Company, in either case, in violation of
the LLC Agreement.

19 60. In turn, Paragraph 7 (“Expenses and Damages”) of the Undertaking
20 provides that the Principals “shall pay to Investor Member within ten (10) days after
21 demand any and all actual and reasonable expenses, losses, costs or damages paid or
22 incurred by Investor Member, including reasonable attorneys’ fees and disbursements,
23 as a result of a breach by the Principals of an obligation under this letter, together with
24 interest at 12% per annum, but in no event at a rate which exceeds the highest rate
25 permitted by applicable law, on any amounts owing under this letter from the date paid
26 or incurred by Investor Member until paid by the Principals.”
27
28

61. Since its execution, the Undertaking has been amended from time to time by mutual agreement of the Investor Member and the Principals. None of the amendments has modified or altered the Principals' indemnification obligations under Paragraphs 1 and 7.

E. The Parties Amend the JVA

62. The JVA was amended several times: three times by substitution pages and ten times by standalone Amendments. The first amendment by substitution pages took place only days after the execution of the JVA when Michelle McClure of DLA noticed a typo in the definition of "Capital Contribution Percentage." On or about September 10, 2010, McClure proposed changing the page to address the typo, and Chernove gave McClure permission to "make the changes you suggest and to substitute the pages." Afterward, McClure circulated the amended JVA back to Chernove, Andersen, and others, copying Neil Shekhter and explaining: "I noticed a typo in one of the definitions and Sheldon [Chernove] has authorized me to change out the page. He asked that I circulate a final, executed LLC agreement of P6 LA MF Holdings I LLC for your files." Neil Shekhter did not object to the copy of the JVA that McClure circulated, even though it included the five-year Buy/Sell Provision.

63. The next amendment by substitution took place on or about September 30, 2010. That day, McClure sent Chernove an email with the subject line: "Broadway Closing – one more change to P6 LA MF Holdings I LLC agreement." In her email, McClure asked Chernove to "[p]lease authorize the substitution in the below definition of Subsidiary company in the PF LA MF Holdings I LLC agreement. It just came to our attention that NMBroadway Studios, LLC was the prior owner of the Broadway Property and, as a result, we just wanted it to be clear that the Subsidiary Company included it in the definition." Chernove replied, "[t]his is fine."

64. On or about November 9, 2010, in conjunction with the closing of the Property at 1447 Lincoln Boulevard in Santa Monica, California, Neil Shekhter executed the "First Amendment" to the JVA. That amendment provides that "[e]xcept

1 as provided in this Amendment, the Original LLC Agreement shall remain in full force
2 and effect and unmodified” (the “no modification clause”). Because the amendment
3 did not address the Buy/Sell Provision, the five-year term remained unchanged. On or
4 about December 14, 2010, Neil Shekhter executed the “Second Amendment” to the
5 JVA, which contained the same no modification clause and also did not change the
6 Buy/Sell Provision.

7 65. As executed, the JVA required the Operating Member to fund 30% of
8 capital contributions and the Investor Member to fund the remaining 70%. Shortly
9 after the JVA was executed, it became clear that the Operating Member was either
10 unable or unwilling to meet its contractual obligation to fund 30% of the capital
11 contributions. As a result, AEW agreed to amend the JVA so that the parties would
12 have the flexibility to fund future contributions for individual Properties at amounts
13 other than the 70/30 split originally required.

14 66. On or about January 6, 2011, McClure emailed all parties and their
15 counsel, stating: “Since capital for some of the properties is not being contributed on a
16 70/30 basis, we concluded that certain changes to the Master JV LLC agreement were
17 appropriate. Rather than putting these changes in a separate agreement, we thought it
18 made more sense to revise the Master and substitute pages.” She then asked the parties
19 and their counsel to review and approve the changes, which included the insertion of
20 the term “Specified Property”—defined as any property in which the capital
21 contribution percentages, and thus the ownership interests of the Members, differs
22 from the general percentage interests (e.g., 90/10 as opposed to 70/30). The parties
23 and their counsel approved the changes. This was the third amendment to the JVA
24 made by substitution pages. Importantly, the JVA, as amended by the January 6, 2011
25 request, is the contract on which the parties have based their conduct since then,
26 including in capital calls requested by NMS.

27 67. On or about January 31, 2011, while working on the closing binders for
28 the transaction, McClure noticed that “there were a few slight errors and some clean up

1 changes needed in the Amendment to the Undertaking of Principals.” As a result, she
2 emailed Tom Johnston of S&W, then counsel for NMS, attaching a “clean and redline
3 version of the Second Amendment to the LLC Agreement (which adds in that
4 ‘Specified Property’ concept from the revised LLC agreement).” She then asked, “[i]f
5 the changes meet with your approval, please email me back that you agree that I can
6 change the pages in our executed copies for inclusion in the closing binders.” On or
7 about February 3, 2011, Johnston responded: “These changes are approved; you are
8 authorized to substitute pages in the originals as necessary.” The closing binders
9 created for the Joint Venture contained all three amendments by substitution.

10 68. After the January 6, 2011 amendments (the “Specified Properties
11 Amendments”), NMS approved and executed eight additional freestanding
12 amendments, several of which designated various Properties as Specified Properties, a
13 term which would not exist but for the January 6, 2011 amendments. All eight of the
14 post-January 6, 2011 amendments—dated January 21, 2011, April 13, 2011, July 27,
15 2011, September 27, 2011, January 9, 2012, March 14, 2012, and June 1, 2012—
16 contained the no modification clause, and none sought to change the 5-year Buy/Sell
17 Provision.

18 69. While the JVA has been amended on a number of occasions, as set forth
19 above, none of these amendments modified the 5-year Buy/Sell Provision in Article
20 11. A true and correct copy of the JVA, as amended by slipsheet pages, is attached as
21 **Exhibit 2** to this Complaint. True and correct copies of the ten executed standalone
22 amendments are attached as **Exhibit 3** to this Complaint.

23 70. On or about July 28, 2011, Shekhter certified to a Joint Venture lender, on
24 behalf of NMS, that the true, correct, and operative agreement was the JVA containing
25 the January 2011 amendments, i.e., Exhibit 2. As certified, the JVA reflected the same
26 5-year Buy/Sell Provision that existed in every copy and version of the JVA following
27 Chernove’s July 28, 2010 comments.
28

71. At many other times between September 8, 2010 and the present, NMS circulated and otherwise relied upon the amended JVA with the 5-year Buy/Sell Provision. Indeed, all copies of the JVA circulated before July 2013 reflect the 5-year Buy/Sell Provision.

F. Shekhter Forges a Version of the JVA with a 3-Year Buy/Sell Provision to Extort AEW into Selling Its Membership Interest Before the Five-Year Anniversary and at a Substantial Discount

72. By 2013, the value of the Joint Venture's Properties had rebounded in value. Unhappy with the deal he had struck, Shekhter began exploring ways to squeeze out the Investor Member and keep most of the Joint Venture's profits for himself and NMS.

73. Recognizing he could not trigger the Buy/Sell because five years had not elapsed, Shekhter instead proposed a transaction by which the Investor Member would voluntarily transfer its membership interest to the Operating Member in less than three years—and at a substantial discount. Specifically, on or about June 26, 2013, Shekhter sent a letter to Samek suggesting the “structuring of a single transaction where the Investor Member would receive, concurrently with the closing of such transaction, (i) an IRR of 24% and (ii) aggregate distributions equal to the product of 1.75 multiplied by the Investor Member's aggregate Capital Contributions,” and “[u]pon such payment, the Investor Member would withdraw as a Member of the Company [i.e., the Joint Venture] and have no further rights or obligations under the LLC Agreement.” As part of Shekhter's June 26 proposal, he suggested “cleaning up the LLC Agreement” and amending it “to provide for the withdrawal of the Investor Member.” In other words, Shekhter acknowledged and recognized that NMS had no unilateral right to require AEW to sell its interests. AEW was not interested in Shekhter's proposal.

74. Not to be deterred, however, Shekhter and his co-conspirators began their campaign of forgery and intimidation to force AEW to sell its interest against its will.

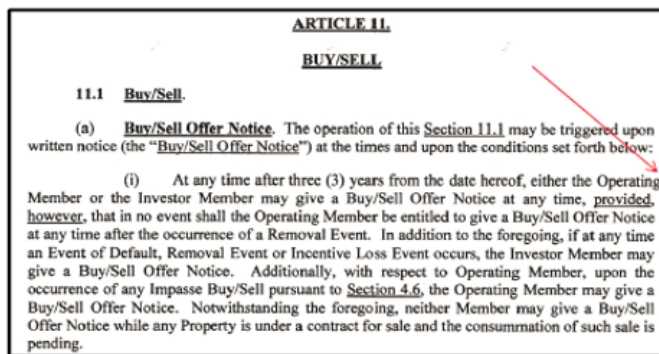
1 On or about July 12, 2013, Steve Williford, NMS Properties' General Counsel,
2 emailed Drew Flowers, a partner with Gibson Dunn, which was then representing the
3 Investor Member. Williford asked Flowers for help in determining which of the two
4 versions of the JVA attached to his email was the operative "version:" (1) the copy
5 attached to McClure's September 10, 2010 email (i.e., the original, executed JVA with
6 the first two sets of slipsheet pages substituted in, but not the slipsheet pages agreed to
7 in January 2011 containing the Specified Properties language); or (2) the copy attached
8 to McClure's January 20, 2011 email (i.e., Exhibit 2, which contains the additional
9 slipsheet pages referencing Specified Properties). Notably, both copies contained the
10 agreed upon 5-year Buy/Sell Provision.

11 75. Shekhter then created the forged "Version 2" of the JVA through a
12 complex, multi-step process—one that AEW's experts in the Lincoln Studios
13 Litigation were able to reconstruct through a forensic examination of the hard-copy
14 forgeries and NMS' devices and electronic data, to the extent that their devices and
15 data were produced pursuant to court order or were otherwise recoverable.
16 Specifically, on July 12, 2013, not long after Williford sent his July 12, 2013 email,
17 Shekhter forwarded Williford's email, including the PDF attachments, to his son Adam
18 Shekhter; this included a PDF version of the original executed JVA with the 5-year
19 Buy/Sell Provision in an electronic file named "P6 LA MF Holdings I LLC.pdf." On
20 information and belief, it was this PDF file that was later used as the basis for the
21 "Version 2" forgery of the JVA.

22 76. On July 14, 2013, the electronic version of the forged "Version 2" was
23 created. At 9:46 p.m., an unknown computer opened and modified a file named "P6
24 LA MF Holdings I LLC clean NS 123 PRINT.pdf"—a title identical to that of the PDF
25 that Shekhter forwarded to Adam Shekhter two days earlier, but for the appended
26 language "clean NS 123 PRINT." Notably, the inclusion of "NS," Shekhter's initials,
27 in the document title is confirmation that Shekhter created the PDF, as he commonly
28 added his initials to documents he created, as discussed more fully below. Upon

information and belief, the file was opened by Neil Shekhter on his home computer, called “DELLNEIL2012-PC,” and edited with an Adobe Acrobat application to change the “five (5)” language in Section 11.1(a)(i) to read “three (3).” This alteration caused a single line of text—the line containing the fabricated term—to hang over the right-hand justification that exists in every other line of the page and the rest of the JVA. This telltale “overhanging g” was a crucial indicator of forgery.

Changing “five” to “three” Causes A Single Overhanging Letter



either the Operating
ny time, provided,
y/Sell Offer Notice
going, if at any time
estor Member may

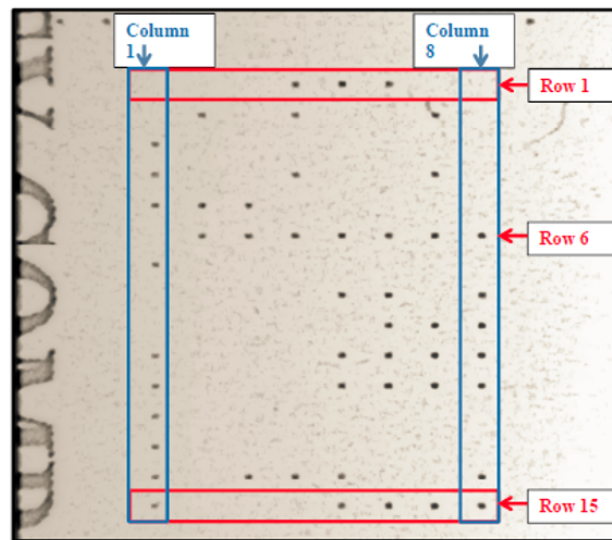
Neil Shekhter’s “DELLNEIL2012-PC” home computer was never produced during the Lincoln Studios Litigation despite a Court Order that it be produced and even though forensic examination later established that—contrary to Shekhter’s perjurious testimony that he threw it away in late 2014/early 2015—it was still being used as late as September 19, 2015, *after* the court in the Lincoln Studios Litigation issued its Order requiring its production. On information and belief, Neil Shekhter still maintains possession of this computer to this day and concealed it from the Los Angeles Superior Court and from AEW.

77. On July 15, 2013, at 1:24 p.m., the electronic “clean NS 123 PRINT” forgery was transferred from that same unknown computer (on information and belief, Shekhter’s “DELLNEIL2012-PC”) to a USB flash drive (also never produced by Shekhter or NMS despite a Court Order requiring its production) and subsequently opened on Adam Shekhter’s NMS desktop computer at 3:51 p.m. “Version 2” was then printed by Adam Shekhter at NMS’ offices on NMS’ Xerox WorkCenter 7775

printer, Serial Number RFX001896. After it was printed, “Version 2” was then scanned to Adam Shekhter’s NMS’ email account shortly after 4:00 p.m., eliminating all metadata that would have been associated with the PDF file (to conceal the origins of the forgery).

78. The printed “Version 2”—which Shekhter repeatedly testified under oath was the “original” hard copy he received in September 2010—actually contains “CPS” code—an anti-counterfeiting code embedded by some office printers—that matches this timeline and location perfectly. That is, the hard-copy document confirms that the hard copy that Shekhter claims was delivered to him by hand in 2010 was actually printed sometime between 3:00-4:00 p.m. on July 15, 2013 using the Xerox WorkCenter 7775 multifunction office machine, Serial Number RFX001896, at NMS’ offices.²

**The CPS Code Found On “Version 2”
Confirms It Was Printed On July 15, 2013 At NMS’ Offices**



² Additional forensic evidence confirmed that the printed “Version 2” was not a “original” hard copy from 2010 as Shekhter repeatedly swore. For example, the printed “Version 2” also contains a CPS code on every page, but for one page—Mr. Samek’s signature page. This means that Mr. Samek’s signature page on “Version 2” was removed and substituted with another signature page taken from another source and substituted into the document after it was first printed on July 15, 2013. The fact that this page, the 79th page of the 120+ page Version 2, was substituted with an obviously older page from another document, likely evidences an attempt to make the signature line appear older if ink testing were performed.

1 79. After scanning “Version 2” into the sanitized PDF file of the forgery,
2 Adam Shekhter emailed this “CLEAN” file to his father, Neil Shekhter, at 4:51 p.m.

3 80. After he received “Version 2” from his son Adam on July 15, 2013,
4 Shekhter began circulating the forgery internally at NMS to make it appear that others
5 had also always had a copy of the forgery. A review of NMS’ electronic server and
6 devices, however, showed that no electronic copy of the “Version 2” forgery of the
7 JVA ever existed on any NMS server or device before July 15, 2013.

8 81. On July 18, 2013, just three days after creating, printing, and scanning the
9 forged “Version 2,” Shekhter began disseminating the forgery to third parties,
10 including a Joint Venture lender. That day, in furtherance of the scheme, Shekhter
11 emailed a copy of the forged “Version 2” of the JVA to Andrew Lucca, in Arizona,
12 and James Prouty of KeyBank, the federally insured lender for one of the Joint
13 Venture’s Properties. In the email, Shekhter falsely represented that the forgery “is the
14 version that I have executed in September 2010.” Of course, Shekhter knew the
15 document attached to his email (“P6 LA MF Holdings I LLC 2 v.2.pdf”) was a forgery
16 and not what he executed in September 2010 because he and his son Adam had forged
17 “Version 2” only days earlier. Upon information and belief, Shekhter sent the forgery
18 to KeyBank and knowingly misrepresented its authenticity with the intent that
19 KeyBank would rely on it to the detriment of Plaintiffs, with the intent to defraud
20 KeyBank into relying on “Version 2” as the operative JVA, and to create the
21 appearance that “Version 2” had always been in KeyBank’s files if AEW asked
22 KeyBank for a copy of the JVA that KeyBank had in its files.

23 82. On July 19, 2013, apparently in an attempt to provide cover for the
24 sudden appearance of a 3-year Buy/Sell provision when the executed JVA always
25 relied upon by the Joint Venture contained a 5-year Buy/Sell provision, Shekhter
26 emailed a number of NMS employees, including Williford, the Buy/Sell formula (the
27 later of three years or stabilization) that had been contained in the non-binding Term
28 Sheet in May 2013, long before the parties had finalized their negotiations and

1 executed the JVA. However, in response, Williford noted: “***This concept did not***
2 ***make it into the actual LLC agreement.***”

3 83. Mere hours after Williford confirmed there was no 3-year Buy/Sell in the
4 executed JVA, Shekhter directed Williford to email Flowers again on July 19, 2013,
5 this time attaching a copy of the forgery, which he described as the “last version of the
6 LLC Agreement that was approved by Neil [Shekhter], which was sent hard copy to
7 our offices in September 2010 – with the buy-sell permitted after 3 years, which is
8 consistent with the executed term sheet and the conversations of NMS and AEW over
9 the last three years.” Williford later testified that Shekhter “ghost wrote” the email.
10 Shekhter knew, of course, that the document attached to Williford’s email (“P6 LA MF
11 Holdings I LLC v.2.pdf”) was a forgery, but caused the forgery to be sent to AEW’s
12 counsel by email (along with additional false statements) in order to pressure AEW
13 into selling Shekhter/NMS AEW’s interest in the Joint Venture against its wishes and
14 at a substantial discount.

15 84. Williford’s July 19, 2013 email was the first time AEW learned of the
16 forgery. Upon receiving the forgery, AEW took steps to determine its origins and
17 concluded that nobody at AEW had ever seen it before, or even a draft of it.

18 85. Also, on or about August 16, 2013, Williford emailed Tom Johnston of
19 S&W, one of NMS’ original deal counsel, attaching a copy of the forged “Version 2.”
20 Copying Shekhter, Williford asked Johnston if he had “ever receive[d] a fully executed
21 [copy] of this LLC Agreement (see attached) – whether via email or in hard copy by
22 mail – from AEW or its attorneys?” On information and belief, this email was sent at
23 Shekhter’s request in order to cause Johnston to rely on its authenticity, and also to
24 place the “Version 2” forgery in yet another third party’s files in case AEW asked him
25 for a copy of the document that was in his files.

26 86. Johnston, however, replied that until the transfer of the Property at 9901
27 Washington, “the original form of the P6 MF Holding I LLC Agreement was ***the LLC***
28 ***Agreement.*** We exchanged the original form of agreement as a copy P6 LA MF

1 Holdings I LLC Agreement *on multiple occasions*. . . . On or about January 21, 2011
2 the ‘Change Pages’ regarding ‘Specified Properties’ were substituted into the PA LA
3 MF Holding I LLC Agreement and presented to [a Joint Venture Lender] as the true
4 and correct copy of the P6 LA MF Holding I LLC Agreement. Since January 21,
5 2011, the P6 LA MF Holding I LLC Agreement with the ‘Change Pages’ has been
6 treated as the P6 LA MF Holding I LLC Agreement and presented as so on all
7 transactions after January 21, 2011. I still have not found any correspondence
8 evidencing your agreement to substitute the ‘Change Pages’ but NMS has consistently
9 certified that the P6 LA MF Holding I LLC Agreement with the ‘Change Pages’ is
10 the P6 LA MF Holding I LLC Agreement on transactions after January 11, 2011.”
11 (Emphases added.) In other words, Exhibit 2 to this Complaint, not the forged
12 “Version 2,” has been the operative JVA certified by NMS and relied upon by
13 everyone since January 11, 2011.

14 87. In September 2013, NMS informed AEW that it intended to submit the
15 forgery to a third-party lender in connection with the refinancing of one of the
16 Properties. AEW challenged the authenticity of the forgery and warned NMS that if it
17 submitted the forgery to the lender, such conduct would constitute an Event of Default
18 under the JVA, which would be grounds for NMS’ removal as the Operating Member
19 of the Joint Venture. NMS represented that it did not submit the forgery at that time,
20 but continued with its fraudulent and extortionate scheme nonetheless.

21 88. On or around November 18, 2013, in an email to Samek copying
22 Williford, Margot Shekhter, and other NMS executives, Shekhter claimed that the
23 January 2011 slipsheet pages containing the Specified Properties Amendments were
24 not valid, contrary to his own admissions and conduct and that of NMS’ counsel over
25 the prior three years. In this email, Shekhter claimed “I recently discovered that there
26 are multiple copies of the LLC Agreement . . . that contain different terms” and
27 “[a]pparently, the prior law firm for AEW ‘slipped’ pages into an iteration without my
28 authorization.” Shekhter’s goal was not only to lay the groundwork for using his

1 forgery but also to cast doubt on the authenticity and validity of the JVA that had been
2 submitted to and relied upon by numerous Joint Venture lenders and to further the
3 extortionate scheme. NMS refused to certify the actual JVA to any more lenders,
4 paralyzing both AEW and the Joint Venture and its Subsidiary Companies, whose
5 clear title and authority were required for any future loan, re-financing or sale of the
6 Joint Venture Properties. NMS was also seeking to fraudulently capture for itself all of
7 the financial benefit created by AEW's additional capital investment in the Joint
8 Venture Properties made only as a result of the Specified Properties Amendments to
9 the JVA. Before these amendments were agreed upon (and incorporated into at least
10 five standalone executed amendments), NMS was required to put up 30% of the capital
11 compared to AEW's 70%, with the expectation that at some point NMS would obtain a
12 return based on its 30% capital contribution. However, after the Specified Properties
13 Amendments, originally requested by NMS shortly after the execution of the JVA
14 because it was either unable or unwilling to meet its contractual obligation to fund
15 30% of the capital contributions, AEW invested 90% of the capital compared to 10%
16 from NMS. After AEW had invested the additional capital in reliance on the amended
17 JVA, NMS was fraudulently trying to claim that it should get credit for a 30%
18 investment when it had only invested 10%. This was on top of NMS' fraudulent
19 efforts to force AEW to sell its interest in the Joint Venture to NMS before the five-
20 year anniversary of the executed JVA, against its wishes, and at a time when AEW's
21 return would have been "capped" at far less than it was entitled to after the five-year
22 anniversary.

23 89. On or around December 26, 2013, Williford again asked Johnston to
24 provide his "files for AEW." Of course, there was no forgery in Johnston's actual
25 files. Johnston's response attached the operative JVA as amended in January 2011,
26 along with all ten standalone amendments to the JVA, thereby confirming once again
27 that the JVA always had both a 5-year Buy/Sell term and the Specified Properties
28 Amendments.

G. To Further the Extortionate Scheme, Shekhter Files a Sham Complaint Based on the Forgery, and Repeatedly Lies Under Oath Regarding Its Origins and Authenticity.

90. On or about July 15, 2014, NMS Capital, Shekhter, and other affiliates (collectively, the “Lincoln Studios Plaintiffs”)³ filed suit against, *inter alia*, the Investor Member’s former counsel, DLA and Seyfarth Shaw, in the Superior Court for the State of California for the County of Los Angeles, *Lincoln Studios, LLC, et al. v. DLA, et al.*, Case No. BC551551 (the Lincoln Studios Litigation).

91. In early 2015, Shekhter submitted a detailed 22-page declaration in the Lincoln Studios Litigation describing—under oath—the negotiation, execution, and terms of the JVA, but making no mention whatsoever of “Version 2,” any alleged typo leading to “Version 2,” or any alleged 3-year Buy/Sell term. Shekhter even specifically referenced the Article 11 Buy/Sell rights of the JVA, which was attached to another filing made by DLA, but made no challenge whatsoever to the 5-year Buy/Sell term contained in DLA’s attached JVA. Shekhter also declared that he spoke with Samek several times between September and October 2010, but again failed to even hint at the claim he would later make that AEW had allegedly sent “Version 2” to him in order to correct a typo, even though Shekhter spent several paragraphs in his declaration disputing the January 2011 Specified Properties Amendments. In sum, despite addressing the Buy/Sell Provision and the supposed validity of the JVA in detail, Shekhter did not mention “Version 2” or any alleged 3-year Buy/Sell term a single time. Apparently, Shekhter and his Co-Conspirators believed that AEW would

³ The full list of Lincoln Studios Plaintiffs is as follows: Neil Shekhter, individually and as a Trustee of the NMS Family Living Trust Dated September 3, 1991 (2000 Restatement); Margot Shekhter, individually and as a Trustee of the NMS Family Living Trust Dated September 3, 1991 (2000 Restatement); NMS Capital Partners, LLC; NMS Capital Partners I, LLC; the NMS Family Living Trust Dated September 3, 1991 (2000 Restatement); Lincoln Studios, LLC; NMSLUXE375, LLC; NMSLUXE415, LLC; 9901 LUXE, LLC; and NMBROADWAY Studios, LLC. Shekhter is alleged to be the principal of the Lincoln Studios Plaintiffs.

1 be compelled to sell its interest in the Joint Venture to NMS in order to “save” its
2 former counsel and/or to avoid any possible intrusion into its attorney-client privilege,
3 but Shekhter did not yet feel secure enough in his scheme to actually submit the forged
4 “Version 2” to the Los Angeles Superior Court. However, that quickly changed.

5 92. On or about April 21, 2015, when it became clear that AEW still would
6 not cave to the fraudulent and extortionate scheme being perpetrated by Defendants,
7 Shekhter, Margot Shekhter, NMS Capital, and the other Lincoln Studios Plaintiffs
8 authorized the filing of the First Amended Complaint (“FAC”) in the Lincoln Studios
9 Litigation, naming AEW and the Joint Venture as defendants—as well as AEW CM,
10 AEW P6, Samek, and other affiliates (collectively, the “Lincoln Studios
11 Defendants”).⁴ In the FAC, the Lincoln Studios Plaintiffs alleged that the forged
12 “Version 2” was the operative version of the JVA. Specifically, they alleged (1) that at
13 some point Neil Shekhter “noticed that Version 1 [the original executed JVA] appeared
14 to contain a mistake, i.e., that the Buy/Sell provisions stated that the Buy/Sell
15 procedure could occur after 5 years, instead of after 3 years”; (2) that Shekhter
16 “contacted” Samek/AEW and that Samek/AEW “told” Shekhter that they would ask
17 DLA “to revise Version 1 so that it stated ‘Buy/Sell’ could occur after 3 years, instead
18 of after 5 years”; (3) that DLA and/or AEW subsequently “delivered a corrected
19 operating agreement (‘Version 2’)—i.e., the forgery—in September 2010; (4) that
20 AEW “fabricated another version of the operating agreement (Version 3)—i.e., the
21 JVA as amended to include the Specified Properties—“by lifting [Shekhter’s]
22 signature from other documents and physically placing it into Version 3”; and
23 (5) that “Version 3 was **not** authorized or executed by NEIL.” Based on these
24

25
26 ⁴ The full list of Lincoln Studios Defendants affiliated with the Joint Venture is as
27 follows: P6 LA MF Holdings SPE, LLC (the Investor Member), P6 LA MF
28 Holdings I LLC (the Joint Venture), AEW Capital Management, L.P., AEW
Partners VI, L.P., AEW Partners VI, Inc., AEW VI, L.P., Eric Samek, Marc
Davidson, Lincoln Walk Studios, LP, Luxe Washington, LLC, Luxe La Cienega,
LLC, and NMS Broadway, L.P.

1 allegations, the Operating Member purported to assert a claim for “Breach of Version
2 2.”

3 93. Each and every one of the foregoing allegations was knowingly false and
4 misleading. The inclusion of the five-year Buy/Sell was not a “mistake,” but was
5 expressly requested by NMS and its deal counsel. Shekhter never contacted AEW or
6 Samek in 2010 to discuss any alleged “mistake” because there was no mistake, and
7 neither AEW nor Samek ever told Shekhter they would ask DLA to revise the JVA to
8 include the 3-year Buy/Sell or do so themselves. Neither AEW nor DLA delivered a
9 copy of “Version 2” to Shekhter in 2010. To the contrary, Neil Shekhter created
10 “Version 2” in July 2013. And AEW did not forge the operative version of the JVA.
11 In fact, NMS and its counsel approved the Specified Properties Amendments and
12 Shekhter later certified that the JVA as amended in January 2011 was the true, correct,
13 and operative version of the JVA. Defendants filed the FAC with its false allegations
14 and reliance on the forged “Version 2” not only to defraud the court, but also to further
15 their fraudulent and extortionate scheme against Plaintiffs. The mere filing of the FAC
16 cast doubt on the validity of the JVA, the title to the Properties owned by the
17 Subsidiary Companies, and AEW’s authority over any sale of the Joint Venture
18 Properties or re-financing of any Joint Venture Property loans. As a direct result of the
19 filing of the FAC, AEW was expressly told by at least two title insurance companies
20 that it would not issue title insurance in connection with any Joint Venture Property
21 sale or loan, which meant that the Joint Venture Properties could not be sold or re-
22 financed unless AEW capitulated to Defendants’ fraudulent and extortionate scheme or
23 prevailed in the sham Lincoln Studios Litigation. It also meant that the Joint Venture’s
24 Subsidiary Companies would almost certainly default on their existing loans in the not
25 too distant future unless they capitulated to the fraudulent and extortionate scheme or
26 prevailed in the litigation.

27 94. The FAC was personally served on AEW and its affiliates (or the
28 registered agent of those entities), emailed by NMS’ counsel, Steven Zelig, to AEW’s

1 counsel at Gibson Dunn on or about April 30, 2015, and, on information and belief,
2 forwarded by Defendants and their Co-Conspirators to various lenders and third parties
3 with the intention that the third parties would rely upon the false allegations and forged
4 “Version 2” to the detriment of Plaintiffs. On information and belief, the FAC was
5 also sent to counsel for other defendants in the Lincoln Studios Litigation through
6 email and mail via the U.S. Postal Service on or about April 21, 2015.

7 95. On or about June 11, 2015, AEW filed an action in the Superior Court for
8 the State of California for the County of Los Angeles, seeking the removal of NMS
9 Properties as the property manager of the Joint Venture’s Properties. *See P6 LA MF*
10 *Holdings I LLC, et al. v. NMS Properties, Inc.*, Case No. BC 584878 (the “Property
11 Management Litigation”). On that same day, AEW applied for a temporary restraining
12 order and an order to show cause why a preliminary injunction should not issue. On
13 June 19, 2015, in the process of briefing the Motion for Preliminary Injunction in the
14 Property Management Litigation, and in furtherance of the fraudulent and extortionate
15 scheme, Shekhter submitted a perjurious declaration which attached and purported to
16 authenticate the forged “Version 2” JVA. The declaration contained numerous false
17 and misleading statements, including the following:

18 5. Although the first version of the JVA was not delivered to me as
19 required and therefore is of no effect, I executed the signature pages
20 electronically believing I had the right to acquire the interests of AEW
21 within 5 years and as of the 3 year anniversary as I had repeated advised
22 Samek and Davidson. After my signature pages were affixed to the first
23 version of the JVA, I noticed that the first version appears not to allow for
24 a Buy/Sell until after year five years of the Venture. I brought this to Mr.
25 Samek’s attention. He said he would correct this, and a second version of
26 the JVA, with the same signed pages, was delivered to my office. I
27 understand that AEW claims I agreed to a third version that is worse for
28 me than the first and second, which I absolutely did not do. . . .

24 6. I have reviewed the document attached as Exhibit A to the
25 Declaration of Marc L. Davidson dated June 10, 2015 entitled “Limited
26 Liability Company Agreement for P6 LA MF Holdings I LLC” and
27 referred to in the Davidson Declaration as the “JV Agreement.” I never
28 approved, executed or otherwise agreed to that JV Agreement. Nor did
any other authorized agent of NMS Capital Partners I, LLC; I know this to
be the case because no one but me had the authority to approve a
document like this for NMS Capital Partners I, LLC. The signature page
(p. 79) in Exhibit A appears to have been signed by me, but, in fact, that

signature page had to have been taken by AEW from a prior version of Exhibit A and physically placed within the alleged version without my permission. . . .

7. As I read the different JVA, the second version most closely reflects the buyout/ acquisition rights to which I and Mr. Samek had agreed. Attached hereto as Exhibit A is a true and correct copy of that version.

On or about June 22, 2015, Miller and Zelig, counsel for NMS, acting on behalf of NMS Properties, caused the perjurious declaration to be sent through the U.S. Postal Service and facsimile to AEW's counsel at Gibson Dunn.

96. Each and every one of the foregoing allegations was knowingly false and misleading. NMS specifically requested and negotiated for the inclusion of a 5-year Buy/Sell, and the Buy/Sell Provision in the executed JVA contained no mistake. In fact, both Shekhter and Margot Shekhter repeatedly affirmed the validity of the January 2011 Specified Properties Amendments, through both written confirmation and its conduct. And Shekhter knew, of course, that "Version 2," which he attached as Exhibit A to his declaration, was a forgery because he created it. Upon information and belief, Shekhter, Margot Shekhter, the other Defendants, and the Co-Conspirators authorized and directed the filing of this false and misleading declaration for the purpose of causing reasonable fear of economic loss of the part of Plaintiffs and with the intent that the court would rely on the false and misleading allegations to the detriment of Plaintiffs.

H. Shekhter Creates a Second Forgery to Perpetuate the Extortionate Scheme by Preventing NMS Properties' Removal as Property Manager

97. NMS Properties was originally retained as the property manager pursuant to a Property Management Agreement (PMA) with each Subsidiary Company. The JVA requires in Article 1 that all PMAs be "cancellable, without penalty or fee, upon thirty (30) days written notice." Pursuant to Section 8.4 of the JVA, PMAs could only be terminated or modified by AEW or with the prior written approval of AEW. The

1 parties also negotiated and agreed to a Form PMA at the same time that the Joint
2 Venture was negotiated and executed, which set forth in detail all of the material terms
3 that the PMAs were required to contain. Section 12 of the Form PMA (and all
4 subsequent valid PMAs) allowed the PMAs to be terminated by AEW (1) upon 30
5 days' written notice, without cause or penalty (the "30-day notice provision");
6 (2) immediately, without cause, with the payment of a termination fee;
7 (3) immediately, with cause; *and* (4) immediately, upon sale or transfer of the
8 Property.

9 98. On or about May 6, 2015, AEW, on behalf of the Subsidiary Companies,
10 sent NMS Properties written notice that it was being terminated as the property
11 manager of the Properties after no less than 30 days pursuant to the 30-day notice
12 provision (the "PM Termination Notice").

13 99. On or about May 26, 2015, AEW, on behalf of the Subsidiary Companies,
14 notified NMS Properties that it would be terminated as of June 10, 2015, a date more
15 than 30 days after the PM Termination Notice was sent.

16 100. However, on June 10, 2015, the properly noticed termination date, NMS
17 Properties failed to comply with its obligations upon termination.

18 101. On or about June 11, 2015, AEW filed the Property Management
19 Litigation seeking the removal of NMS Properties as property manager of the
20 Properties pursuant to the valid termination of the PMAs. *See P6 LA MF Holdings I*
21 *LLC, et al. v. NMS Properties, Inc.*, Case No. BC 584878. On that same day, AEW
22 applied for a temporary restraining order and order to show cause why a preliminary
23 injunction should not issue. AEW's chief ground for removal was the 30-day notice
24 provision in the Form PMA that was required to be in every PMA (and it was in every
25 PMA in Plaintiffs' possession), which allowed for the termination of NMS Properties
26 at each Property without cause merely upon the provision of 30 days' written notice.

27 102. As described above, Shekhter and NMS Properties submitted and
28 purported to authenticate the forged "Version 2" JVA in the Property Management

1 Litigation, copies of which were mailed by Defendants and their Co-Conspirators to
2 Gibson Dunn, and on information and belief to various other third parties. This was
3 not the only forgery created and relied upon by Defendants in the Property
4 Management Litigation and the Lincoln Studios Litigation.

5 103. On or about June 23, 2015, the Los Angeles Superior Court in the
6 Property Management Litigation conducted a lengthy hearing on AEW's request for a
7 preliminary injunction—a request that had been extensively briefed over the previous
8 two weeks. At the hearing on that motion and in connection with the briefing,
9 Defendants submitted only a single PMA—for 1410 5th Street—which contained all of
10 the required termination provisions, including the 30-day notice provision.

11 104. On or about June 24, 2015, the Los Angeles Superior Court granted
12 AEW's motion for a preliminary injunction based upon the proper termination of NMS
13 Properties pursuant to the 30-day notice provision. Apparently recognizing that this
14 Order was imminent, however, at around 7:00 in the morning just prior to the Order
15 being issued, Shekhter and his Co-Conspirators began creating the second forgery at
16 issue, a forged PMA for the La Cienega Property owned by one of the Joint Venture
17 Subsidiary Companies.

18 105. On June 24, 2015, the morning after the hearing, sometime between 7:00
19 a.m. and 7:30 a.m., Shekhter began receiving (and possibly forwarding to himself)
20 emails from the accounts of current and former NMS employees containing Word and
21 PDF versions of older PMAs for the Lido and Washington Properties owned by the
22 Joint Venture, each of which contained the standard 30-day notice provision. Shortly
23 thereafter, at around 7:40 a.m., the Los Angeles Superior Court notified the parties that
24 it had granted AEW's request for a preliminary injunction. At around 8:00 a.m., on
25 information and belief, Shekhter created a new Word file on his home computer called
26 "Property Management – 375 ns.doc." "375" was the street number for the La Cienega
27 Property, and "NS" are Shekhter's initials, which, as described above, Shekhter
28 commonly includes in the title of documents he creates. On information and belief,

Shekhter created this Word file by first saving or copying an older Word file for the Lido Property that had been emailed to Shekhter less than an hour earlier. Shekhter then edited the new Word file to change the 30-day no cause termination language in Section 12.1 into a 60-day no cause termination provision, and to delete the right to terminate the PMA immediately upon payment of 30 days' worth of Property Management fees; he also made other changes to the document to make it appear, falsely, that the document had been amended in a number of ways after negotiation (a negotiation that never took place). On information and belief, Shekhter then printed out the forged La Cienega PMA and scanned it, subsequently emailing the forgery to his counsel at about 9:00 a.m.⁵ Shortly thereafter, just before 10:00 a.m., Shekhter's counsel gave *ex parte* notice via email of Defendants' intention to appear *ex parte* the next morning to seek reconsideration of the injunction order.

106. However, Shekhter botched his initial forgery. The scanned file relied upon by Shekhter and his attorneys as the basis of their 10:00 a.m. *ex parte* notice contained a cover page showing that this PMA was for a different "owner." Rather than containing the name of the Subsidiary Company that owned the La Cienega Property, the botched forgery still included the name of the owner of the Lido Property on which the forgery was based. This was so even though Shekhter had changed the name of the Property in the botched forgery to the La Cienega Property.

The Botched Forgery Listed The Wrong Owner

<u>MANAGEMENT AGREEMENT</u>	
PROPERTY NAME:	LUXE LA CIENEGA
OWNER:	1410 5 th STREET, LLC
MANAGER:	NMS PROPERTIES
DATE:	MARCH 01, 2012

⁵ While the court in the Lincoln Studios Litigation found that Shekhter's emailing of the botched forgery to his counsel was not privileged, it also found, in the alternative, that even if the contents of the email had been privileged, "any such privilege . . . has been lost pursuant to the crime-fraud exception to the attorney-client privilege."

107. The botched forgery could never have existed, of course, because the owner of the La Cienega Property was never the same owner of the Lido Property, and the Lido PMA, executed years before the La Cienega PMA was drafted, was not the basis for the La Cienega PMA that was circulated among and approved by AEW and NMS in 2012. The actual La Cienega PMA was drafted and circulated by AEW's counsel in an email to NMS and its counsel on January 25, 2012, and was expressly approved by NMS' John Colletti by email on January 26, 2012, and subsequently emailed by AEW's counsel to the lender on January 27, 2012. The actual La Cienega PMA circulated and approved in January 2012 contained the required 30-day no cause termination provision in Section 12.1 and should have been executed and maintained by NMS after that. The approved draft La Cienega PMA in 2012 was based on a later version of the PMAs than the one on which Shekhter's forged La Cienega PMA was based, and did not include several typos and formatting errors that had been included in the Lido PMA on which Shekhter based his forged La Cienega PMA. Thus, the formatting errors and typos contained in the forged La Cienega PMA only exist because Shekhter relied on a Word version of an older PMA.

108. Later that night, Shekhter and/or his Co-Conspirators must have discovered their mistake (the wrong owner name) because Shekhter emailed a new, corrected forged La Cienega PMA to himself at or around 11:22 p.m. that night. The corrected forgery included the correct owner's name, though still included the typos and formatting errors.

109. The next morning, June 25, 2015, Neil Shekhter attached the "corrected" forged La Cienega PMA to his declaration in support of NMS' *ex parte* application. Shekhter never mentioned the initial botched forgery and swore that he was "unable to locate" any PMAs prior to the preliminary injunction hearing except those previously filed. Notably, the botched forgery was never produced by Defendants or their counsel despite a Court Order that all such documents be produced; it was only discovered through a court-ordered forensic examination of NMS devices. On or around July 9,

1 2015, in the course of further briefing ordered by the court in the Property
2 Management Litigation as a result of Shekhter's submission of the forged La Cienega
3 PMA, Shekhter submitted a supplemental declaration reaffirming the forgery and
4 elaborating his perjurious story behind the forgery, falsely declaring "I did have
5 discussions with the Investor Member about having a no-less-than 60-day termination
6 provision for La Cienega" and "the Investor Member agreed to a termination period to
7 [sic] 60 days." Shekhter knew this sworn statement was not true, as he himself created
8 the forged La Cienega PMA only days earlier for the very purpose of overturning the
9 preliminary injunction granted in this matter. On or around July 9, 2015, Shekhter's
10 counsel emailed Shekhter's July 9, 2015 declaration to Gibson Dunn.

11 110. The purpose of the forged La Cienega PMA and its submission to the
12 Court was to defraud the court into withdrawing its order compelling NMS Properties
13 to vacate the Joint Venture Properties as part of Defendants' fraudulent and
14 extortionate scheme against the Plaintiffs, and also to allow Defendants to continue to
15 convert Plaintiffs' rents for their own benefit. After receiving the forged La Cienega
16 PMA the court did withdraw its order compelling NMS to vacate the Joint Venture
17 Properties and NMS refused to vacate the Joint Venture Properties throughout 2015
18 and 2016, preventing Plaintiffs from selling or refinancing the Properties, causing
19 several of the Joint Venture Property loans to go into default, and also preventing the
20 Joint Venture and Subsidiary Companies from accessing books and records, bank
21 accounts, or the Properties themselves.

22 111. Notwithstanding the forgery, on or about August 13, 2015, all of the
23 Subsidiary Companies again issued termination notices to NMS Properties,
24 terminating all PMAs pursuant to the 30-day notice provision (effective as of
25 September 14, 2015) and, without waiving their rights to challenge the forged La
26 Cienega PMA, also terminating the La Cienega PMA by providing 60 days' notice as
27 specified in the forgery (effective as of October 15, 2015).
28

1 112. NMS Properties, however, still refused to vacate the Properties or comply
2 with its termination obligations. These obligations included, but are not limited to,
3 delivering the following to the Subsidiary Companies that own the Properties: (1) a
4 “final accounting, reflecting the balance of income and expenses” of the Properties; (2)
5 “[a]ny balance of monies of Owner or tenant security deposits, or both, held by
6 Manager with respect to the Propert[ies]”; and (3) all “records, contracts, leases, tenant
7 correspondence, files,” and all other “information which pertain in any way to the
8 Propert[ies].”

9 113. Despite having been properly terminated as of June 10, 2015, NMS
10 Properties, under the direction and control of its CEO Shekhter and its President
11 Margot Shekhter, has continued to collect rents for all Properties except 9901
12 Washington (which it vacated on the eve of the preliminary injunction hearing
13 apparently to enhance its “credibility” with the court with respect to the other Joint
14 Venture Properties that were actually collecting millions of dollars in rent, unlike 9901
15 Washington which was still being constructed), continued to hold itself out as the valid
16 property manager at all Properties, refused to surrender the rents it collected after being
17 terminated, and refused to provide access to the Properties’ books and records. NMS
18 did these things to further the extortionate scheme to inhibit the sale of the Properties.
19 Pursuant to Sections 12.3 and 12.4 of the PMAs, all rents and monies collected by
20 NMS Properties following the effective date of its termination up until the sale belong
21 to the Joint Venture and Subsidiary Companies. NMS Properties has no right to retain,
22 withhold, spend, or otherwise control any money it wrongfully collected while holding
23 itself out as property manager. As a result of NMS’ misconduct, Plaintiffs have been
24 harmed.

I. Defendants Continue to Prosecute the Sham Lincoln Studios Litigation and Rely Upon the Forged “Version 2”

114. Even as Defendants created and advanced a new forgery in the Property Management Litigation, Defendants continued to advance and rely upon the forged “Version 2” in the Lincoln Studios Litigation.

115. On or about September 10, 2015, in furtherance of their fraudulent and extortionate scheme, Shekhter, Margot Shekhter, NMS Capital, and the other Lincoln Studios Plaintiffs filed a Second Amended Complaint (“SAC”) in the Lincoln Studios Litigation, emailed a copy to Gibson Dunn and counsel for other defendants in the Lincoln Studios Litigation, and mailed a copy through the U.S. Postal Service to the same. In the SAC, the Lincoln Studios Plaintiffs (including Shekhter and Margot Shekhter) continued to advance and rely upon the forged “Version 2,” repeating the same knowingly false and misleading allegations they made in the FAC regarding its origins and authenticity, and continuing to assert a sham claim for breach of contract based on the forged 3-year Buy/Sell Provision. Upon information and belief, Defendants authorized and directed the filing of the SAC even though they knew its allegations were false and misleading. Defendants filed the SAC with the same intentions and goals as the FAC—to defraud the court, to further the fraudulent and extortionate scheme against Plaintiffs, to prevent the sale or refinance of the Properties unless AEW capitulated to their extortion, and to induce the court and third parties to rely on the false allegations and forged “Version 2” to the detriment of Plaintiffs.

116. On or about September 17, 2015, Shekhter, Margot Shekhter, and NMS Capital verified supplemental interrogatory responses in the Lincoln Studios Litigation (“Responses”). The Responses further rely upon the forged “Version 2,” despite the fact that Shekhter created the forgery and after having repeatedly been put on notice of its fabrication. In fact, Shekhter, Margot Shekhter, and NMS Capital purport to attach “a true and correct copy of Version 2” as an exhibit to the Responses, which were sent

1 by email on or around September 17, 2015 from Zelig to Gibson Dunn, and later by
2 U.S. Mail and fax on or around October 1, 2015 from Zelig to Gibson Dunn.

3 117. On or about September 28, 2015, in furtherance of the fraudulent and
4 extortionate scheme, Neil Shekhter submitted a perjurious declaration in the Lincoln
5 Studios Litigation. Specifically, in Paragraph 13, Shekhter stated that “‘Version 1’
6 [the original executed JVA] appeared not to allow for a buy-sell until after year five,
7 instead of after 3 years,” that Shekhter “brought this to Mr. Samek’s attention,” and
8 that Samek “acknowledged that the provision was inaccurate and he would correct
9 same.” Shekhter stated that “Version 2 arrived at my office accompanied by a letter
10 (on ‘AEW’ letterhead, signed by Mr. Samek) dated September 14, 2010.” In
11 Paragraph 14, Shekhter stated that he “carefully maintained the original hard copies of
12 Version 2 and Mr. Samek’s September 14, 2010 cover letter for it.” The sworn
13 statements were knowingly false and misleading for the reasons set forth in Paragraphs
14 72-89 and 123-138, *supra*. On or about September 28, 2015, Miller and Zelig, acting
15 on behalf of Shekhter, NMS Capital, and the other Lincoln Studios Plaintiffs, caused
16 the perjurious declaration to be mailed through the U.S. Postal Service to Gibson Dunn
17 and counsel for other defendants in the Lincoln Studios Litigation.

18 118. On or about January 13, 2016, in furtherance of the fraudulent and
19 extortionate scheme, Shekhter, Margot Shekhter, NMS Capital, and the other Lincoln
20 Studios Plaintiffs filed a Third Amended Complaint (“TAC”). In the TAC, they
21 purported to change their theories of recovery to rely on Article 6 of the JVA, but
22 continued to advance and rely upon “Version 2,” alleging, *inter alia*, that AEW/Samek
23 “created” “Version 2” “to correct a mistake in ‘Version 1,’ relating to Article 11,” and
24 that Samek “falsely accused [Shekhter] of fabricating Version 2 of the JVA.” For the
25 reasons set forth in Paragraphs 72-89 and 123-138, *supra*, these allegations were
26 knowingly false and misleading. Upon information and belief, Defendants authorized
27 and directed the filing of the TAC even though they knew these allegations were false
28 and misleading. On or about January 13, 2016, Miller and Zelig, acting on behalf of

1 Shekhter, Margot Shekhter, NMS Capital, and the other Lincoln Studios Plaintiffs,
2 caused the TAC to be emailed and mailed through the U.S. Postal Service to Gibson
3 Dunn and, on information and belief, to counsel for other defendants in the Lincoln
4 Studios Litigation. Defendants filed the TAC with the same intentions and goals as the
5 FAC and SAC—to defraud the court, to further the fraudulent and extortionate scheme
6 against Plaintiffs, to prevent the sale or refinance of the Properties unless AEW
7 capitulated to their extortion, and to induce the court and third parties to rely on the
8 false allegations and forged “Version 2” to the detriment of Plaintiffs.

9 119. Just as the court had sustained the Lincoln Studios Defendants’ previous
10 demurrers in the Lincoln Studios Litigation, on June 8, 2016, the court sustained their
11 demurrers to the TAC, this time with prejudice. The court rejected the Lincoln Studios
12 Plaintiffs’ attempt to change their theory of recovery, calling it a violation of the sham
13 pleading doctrine in an attempt to walk away from the forged “Version 2.” The court
14 further rejected the TAC’s new Article 6 theory on the basis that, on its face, Article 6
15 of the JVA was not even “reasonably susceptible to plaintiff[s]’ alleged interpretation.”
16 The court held that Article 6 “does not provide [NMS] with a right to monetize, buy-
17 out, or take-out [AEW’s] rights as alleged.”

18 120. On or about January 19, 2016, in furtherance of their fraudulent and
19 extortionate scheme, Neil Shekhter submitted another perjurious declaration in the
20 Lincoln Studios Litigation, again relying on the forged “Version 2” in an attempt to
21 justify a forensic examination of the Lincoln Studios *Defendants’* devices.
22 Specifically, in Paragraphs 11 and 12 of the declaration, Shekhter stated: “Once I
23 received the full version of the JVA, I saw that Section 11 granted a ‘Buy/Sell’ right
24 five years after formation of the Joint Venture, as opposed to three years to which we
25 agreed. I brought the error to Mr. Samek’s attention, and Mr. Samek said that he
26 would fix it. Mr. Samek fixed the mistake and sent me “Version 2” of the JVA”
27 These sworn statements were knowingly false and misleading. On or about
28 January 19, 2016, Miller, acting on behalf of Shekhter, NMS Capital, and the other

Lincoln Studios Plaintiffs, caused the perjurious declaration to be sent via overnight delivery to Gibson Dunn and, on information and belief, to counsel for other Lincoln Studios Defendants.

121. On or about January 27, 2016, in furtherance of their fraudulent and extortionate scheme, Neil Shekhter submitted another perjurious declaration in the Lincoln Studios Litigation, this time relying on the forged “Version 2” in an attempt to justify sanctions against the Lincoln Studios Defendants for rejecting the forgery. Specifically, in Paragraphs 7 and 8 of the declaration, Shekhter stated: “Once I received the full version of the JVA, I saw that Section 11 granted a ‘Buy/Sell’ right five years after formation of the Joint Venture, as opposed to three years to which we agreed. I brought the error to Mr. Samek’s attention, and Mr. Samek said that he would fix it. Mr. Samek fixed the mistake and sent me Version 2 of the JVA” These sworn statements were knowingly false and misleading. On or about January 27, 2016, Miller, acting on behalf of Shekhter, NMS Capital, and the other Lincoln Studios Plaintiffs, caused the perjurious declaration to be emailed and mailed through the U.S. Postal Service to Gibson Dunn.

122. Each and every one of the foregoing allegations was knowingly false and misleading, as discussed in Paragraphs 72-113, *infra*. Shekhter knew, of course, that “Version 2” was a forgery because he created it. Upon information and belief, Shekhter, Margot Shekhter, Defendants, and the Co-Conspirators authorized and directed the filing of these false and misleading declarations for the purpose of causing reasonable fear of economic loss on the part of Plaintiffs, to further the extortionate scheme against Plaintiffs, and with the intent that the court would rely on the false and misleading allegations to the detriment of Plaintiffs.

**J. Shekhter Forges a Third Document to Further Defendants’
Fraudulent and Extortionate Scheme**

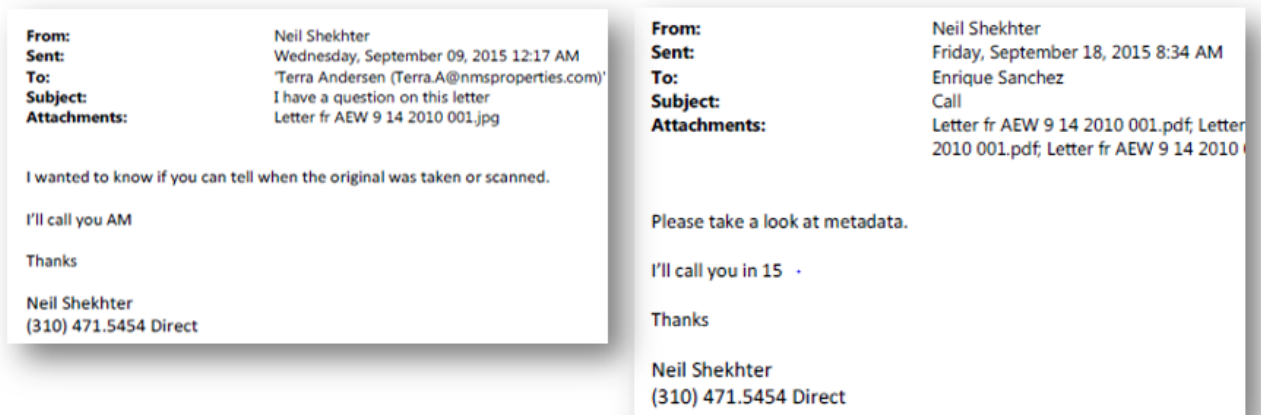
123. While Defendants were advancing the forged “Version 2” and the forged La Cienega PMA, they forged yet another document to bolster the purported

1 authenticity and legitimacy of “Version 2” after Plaintiffs’ counsel provided
2 Defendants’ counsel with the July 28, 2010 Chernove comments to the draft JVA,
3 which alone were sufficient to prove that “Version 2” was a forgery. On or about
4 September 21, 2015, Defendants proffered for the very first time what they claimed to
5 be a September 14, 2010 “cover letter” that Samek had allegedly delivered to Shekhter
6 with the alleged hard copy of “Version 2” that Shekhter claimed to have received (the
7 “Cover Letter”). Notably, Defendants and their Co-Conspirators presented this third
8 forgery for the first time only at Samek’s deposition in September 2015, never having
9 mentioned it before despite years of litigation and dispute over the forged “Version 2.”

10 124. The Cover Letter is yet another forgery created by Shekhter and his Co-
11 Conspirators in furtherance of Defendants’ fraudulent and extortionate scheme. The
12 forged Cover Letter was created on or about June 21, 2015, only six days after
13 Plaintiffs’ counsel provided counsel for the Lincoln Studios Plaintiffs with a copy of
14 the July 2010 Chernove comments to the draft JVA. Forensic examination of NMS’
15 devices established that on or about June 21, 2015, Neil Shekhter emailed himself a
16 PDF copy of the Cover Letter. This was the first time that the document ever appeared
17 on any of Defendants’ electronic devices that were produced in the Lincoln Studios
18 Litigation. The metadata associated with the PDF attached to Shekhter’s email to
19 himself indicated that the PDF was created on “September 21, 2010.” However,
20 forensic examination established that it was impossible that the alleged September 21,
21 2010 creation date could have been accurate because the PDF software used to create
22 the PDF that Shekhter emailed to himself did not exist until December 2014, four
23 years after the Cover Letter was purportedly created. Forensic evidence established
24 that Shekhter created the false metadata by setting back the clock on his 2013 Dell
25 computer to September 21, 2010 and then loading the forgery onto his 2013 Dell
26 computer while the clock was set back to a false date; on information and belief
27 Shekhter created the forged Cover Letter on his 2012 Dell home computer
28 (DELLNEIL2012-PC) before loading it onto his 2013 Dell computer.

125. Forensic evidence uncovered in the Lincoln Studios Litigation also showed that Shekhter emailed the forged Cover Letter to various employees of NMS in order to get them to test whether or not they could determine the true creation date. For example, on September 9, 2015, Shekhter sent an email to an employee asking if she “can tell when the original was taken or scanned,” and on September 18, 2015 Shekhter sent an email to the IT Administrator of NMS asking him to “[p]lease take a look at metadata.” In response to the second email, NMS’ IT Administrator sent to Shekhter an application called ExifTool—a powerful metadata analysis program capable of editing and removing metadata from files. On information and belief, Shekhter was attempting to evaluate the reliability of the forged file and whether his fabrication of the file could be detected.

The “Cover Letter” Is Another Forgery



Ultimately, NMS produced only a fourth version of the Cover Letter in the Lincoln Studios Litigation—one scrubbed of all embedded metadata regarding the date of its creation, and one that was clearly not a first-generation document.

126. The forged Cover Letter soon made its way into Shekhter’s sworn statements in the Lincoln Studios Litigation. On or about September 28, 2015, in furtherance of their fraudulent and extortionate scheme, Neil Shekhter submitted a declaration attaching a copy of the forged Cover Letter. In Paragraphs 13 and 14 of his declaration, Shekhter falsely represented that in September 2010, “Version 2 arrived at

1 my office accompanied by a letter (on ‘AEW’ letterhead, signed by Mr. Samek) dated
2 September 14, 2010,” and that he (Shekhter) “carefully maintained the original hard
3 copies of Version 2 and Mr. Samek’s September 14, 2010 cover letter for it.” These
4 representations were false and misleading. Shekhter repeated these knowingly false
5 and misleading statements (and submitted the forged Cover Letter) at least three more
6 times in the Lincoln Studios Litigation. On or about September 28, 2015, Miller and
7 Zelig, acting on behalf of Shekhter, NMS Capital, and the other Lincoln Studios
8 Plaintiffs, caused the perjurious declaration to be mailed through the U.S. Postal
9 Service to Gibson Dunn and, on information and belief, to counsel for other defendants
10 in the Lincoln Studios Litigation.

11 127. Upon information and belief, Shekhter, Margot Shekhter, the other
12 Defendants, and the Co-Conspirators forged the Cover Letter, submitted it to the Los
13 Angeles Superior Court (and, along with the other forgeries, to the California Court of
14 Appeal), and mailed it to Plaintiffs’ counsel (and, on information and belief, to other
15 third parties) in order to defraud the courts and others into relying on the forged Cover
16 Letter and the forged “Version 2” they claimed to substantiate to the detriment of
17 Plaintiffs and to force Plaintiffs to capitulate to Defendants’ fraudulent and
18 extortionate scheme or face the potential of financial ruin, beginning with the default
19 on various Joint Venture Property loans.

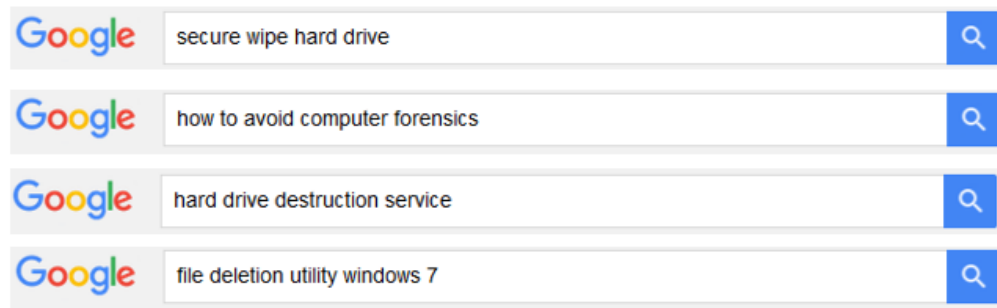
20 **K. In Furtherance of the Fraudulent and Extortionate Scheme,**
21 **Defendants Destroy and Alter Evidence of the Forgeries**

22 128. On September 8, 2015, the Los Angeles Superior Court in the Lincoln
23 Studios Litigation ordered the Lincoln Studios Plaintiffs, including Shekhter, NMS
24 Capital, and Margot Shekhter, to “immediately take steps to freeze all of their
25 electronic documents so that they cannot be modified or deleted.” Then, on October 6,
26 2015, the court ordered a forensic examination of the Lincoln Studios Plaintiffs’
27 relevant electronic media, and ordered the Lincoln Studios Plaintiffs to produce for
28 forensic imaging all of their devices and the devices of their affiliates that “could have

1 ever sent, received modified, opened, altered, or otherwise would have been used to
2 view any copy of the JVA (including ‘Version 2’), Exhibit 41 [the Cover Letter], and
3 all Property Management Agreements (including the Luxe LA Cienega PMA), as well
4 as Mr. Shekhter’s home and office computers (the ‘Devices’).”

5 129. On or about October 15, 2015—one day before Shekhter’s and the other
6 Lincoln Studios Plaintiffs’ deadline to comply with the court’s forensic examination
7 order—Neil Shekhter’s son Alan searched Google for ways to avoid compliance with
8 the court-ordered forensic examination and to wipe the subject computers clean. His
9 search terms included: “*secure wipe hard drive*,” “*backdated secure wipe*,” “*los*
10 *angele[s] anti-computer forensics*,” and “*how to avoid computer forensics*.”

11
12 **NMS Employees Conspire to Permanently Delete and Wipe Devices**
13 **Prior To The Court-Ordered Forensic Examination**



19 ///

20 ///

21 ///

22 ///

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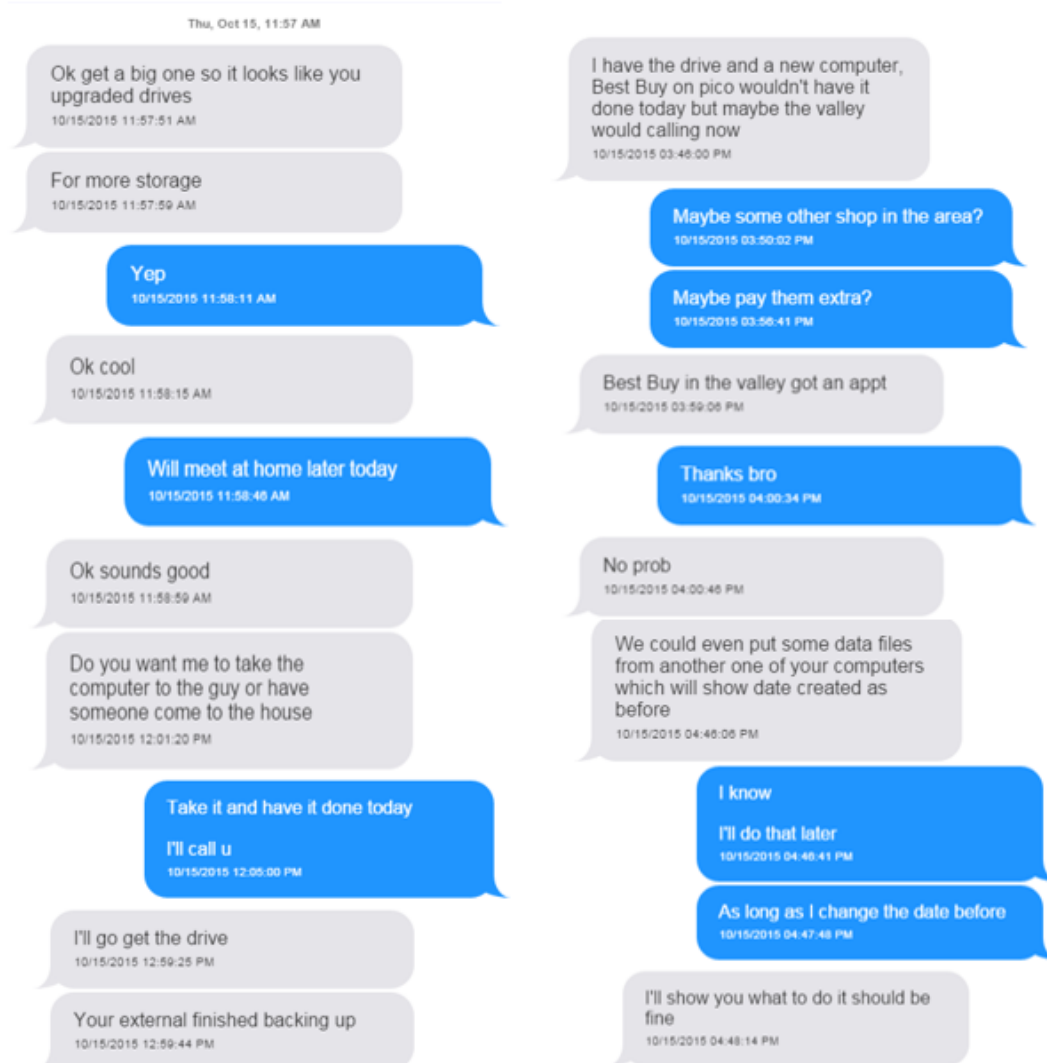
26 ///

27 ///

28 ///

130. On October 15, 2015, Neil and Alan Shekhter then engaged in a text message exchange (which Neil later deleted from his phone in violation of the court's orders) outlining in excruciating detail Shekhter and Alan's plan to remove the hard drive from Shekhter's computer (Shekhter's 2013 Dell computer, as Defendants never produced Shekhter's 2012 Dell computer), replace it, and backdate the computer and load it with files to make it look like the files had always been there, all before any forensic examination took place despite the court's freeze order.

Neil and Alan Shekhter Conspire To Swap Out The Hard Drive On Neil's Computer Before the Court-Ordered Forensic Inspection



*Excerpt

131. That is exactly what they did. That same day, Neil and Alan Shekhter initiated and executed their plan to: (i) remove the hard drive from the home computer that Neil used in 2014-2015 (“Neil’s New Home Computer”); (ii) replace it with a new hard drive that looked similar to the old one; (iii) manipulate and alter the computer by artificially backdating the computer’s clock to make the files appear older than they were; and (iv) flood the new hard drive with more than 75,000 backdated files and folders.⁶ They accomplished each of these illegal tasks, causing the permanent loss of untold evidence and metadata. Once Shekhter was caught in this astonishing act of evidence spoliation, he perjured himself in a further attempt to justify his actions. Shekhter submitted a declaration to the court in the Lincoln Studios Litigation swearing under oath that he and Alan Shekhter replaced the hard drive in Neil’s New Home Computer for the sole purpose of deleting “private personal pictures of my wife [Margot].” This was a lie. The hard drive swap resulted in the deletion of relevant documents, spreadsheets, and PDF files with file names directly implicating the Joint Venture—not pictures of Margot Shekhter.

132. Then, on or about December 2, 2015, two days before the court-ordered imaging of the Lincoln Studios Plaintiffs’ computers, Shekhter and/or his Co-Conspirators manually installed a new operating system on Neil’s New Home

⁶ Critically, Neil picked the backdating date of January 10, 2015. This was no accident, as that date coincided with Neil’s false testimony as to when he allegedly “threw away” his 2013 home computer (“Neil’s 2013 Home Computer”) and “copied information from [it] to the new one.” Specifically, Neil testified that he “threw [the 2013 computer] away” sometime in late 2014 or early 2015 by “put[ting] it in the trash,” despite his obligation to preserve all evidence. The forensic review ordered by the court, however, later showed that Neil’s 2013 Home Computer was still being used as late as September 19, 2015, just days after the court’s September 8 order mandating a freeze of all data. In short, Defendants not only misrepresented the availability of Neil’s 2013 Home Computer (which was still in use as of September 2015 and not “thrown away” in January 2015), but then—in altering Neil’s New Home Computer by removing a hard drive from that computer, replacing it, and backdating it—tried to make it appear that Neil’s perjury about his 2013 Home Computer was true. This constituted both the destruction and fabrication of evidence.

Computer. The installation required an affirmative, manual upload or use of a Windows 10 DVD. The installation of the new operating system made thousands of changes to the file system metadata on the computer, which further compromised Plaintiffs' forensic examination of the computer.

133. That same day, a folder called "AEW" was renamed and many of its contents—including a subfolder called "AEW\AEW Docs\From AEW\09 21 2010\AEW v2 Letter" (which was almost certainly a copy of the forged Cover Letter)—were deleted from Neil's New Home Computer.

134. The Lincoln Studios Plaintiffs' intentional destruction and concealment of evidence of the forgeries did not end there. The Lincoln Studios Plaintiffs also withheld or destroyed several USB external storage devices used on Neil's New Home Computer. In total, at least 21 devices that were connected to Neil's New Home Computer in the six months prior to the forensic examination began were never produced. This is in addition to more than a dozen other electronic devices either destroyed, concealed, or otherwise manipulated by Shekhter and the other Lincoln Studios Plaintiffs.

Devices Destroyed, Manipulated, or Withheld by Defendants and their Co-Conspirators



Neil Shekhter 2012 Computer
(DELLNEIL2012-PC)



Dell OptiPlex 7010
(Adam Shekhter NMS
Dell Desktop)



PNY USB Drive (Used
to transfer "NS clean 123
PRINT.pdf")



New Shekhter Dell
Desktop Computer
(NEIL5810-PC)



Seagate 4 terabyte
drive (Original Seagate
Secondary Hard Drive)



Seagate BUP Slim BK
USB (used in backup of
New Shekhter Dell
Desktop)



Seagate 4 terabyte drive
(Replaced Seagate
Secondary Hard Drive)



20 Other USB
Devices

1 135. Between the period of October 4, 2015 and December 4, 2015, during
2 which the Lincoln Studios Plaintiffs were subject to the court's freeze order, the
3 computer clock on Neil's New Home Computer was manually changed seventeen
4 times, resulting in the manipulation of over 800,000 files and folders and making
5 forensic examination many times more difficult than it otherwise would have been. In
6 fact, the last time Neil's New Home Computer was backdated was the very night that
7 Plaintiffs conducted the court-ordered forensic examination, up until mere minutes
8 before Plaintiffs' expert arrived at NMS' offices, all while the Lincoln Studios
9 Plaintiffs' own computer expert, Neil Shekhter, his son, Alan, and NMS' IT
10 Administrator were all there.

11 136. Other NMS employees participated further in the Lincoln Studios
12 Plaintiffs' intentional destruction and alteration of evidence. For example, in
13 December 2015, just days before the forensic imaging of NMS' computers, Enrique
14 Sanchez, the IT Administrator at NMS, searched for "**file deletion utility windows 7**,"
15 and "**free SSD secure erase**." He then downloaded an application called "Eraser
16 Portable," which is a computer data destruction and wiping application, and on
17 December 4, 2015, the application was copied to the NMS corporate file server. This
18 data wiping utility was used by both Enrique Sanchez and by another NMS employee,
19 Brian Bowis (then Vice President for Finance at NMS), on the day the court-ordered
20 imaging was to occur. Bowis confirmed under oath that he used the Eraser Portable
21 software to delete files relevant to the parties' dispute. That same day, Sanchez also
22 ran a confirming search—"does eraser work on ssd?" Nor were these searches
23 unique. After the court ordered preservation, Sanchez searched for "**wipe multiple**
24 **hard drives simultaneously**," "**hard drive destruction service**," and "**hard drive**
25 **destruction service los angeles**."

26 137. Sanchez also searched for "**Adobe Acrobat removal tool**" on
27 November 13, 2015, and Adobe Acrobat was deleted sometime after October 2, 2015
28 from Adam Shekhter's computer, which had been the host of one of the forged

1 versions of the JVA. This same computer was concealed from forensic examination by
2 being taken offline and unplugged only 24 hours before the forensic examination took
3 place. Equally egregious, on December 3, 2015, Eddie Valentin, whom Defendants’
4 counsel described as Neil Shekhter’s assistant of “many years,” deleted a copy of the
5 forged La Cienega PMA from his NMS computer.

6 138. Defendants and their co-conspirators took these heinous actions—
7 replacing the hard drive on Neil’s New Home Computer, backdating Neil’s New Home
8 Computer, installing a new operating system on Neil’s New Home Computer, deleting
9 and concealing the folders and subfolders relevant to the forgeries, lying about the
10 existence of Neil’s 2013 Home Computer, downloading and using computer data
11 destruction and wiping applications, deleting applications used to create the forged
12 documents, and deleting copies of the forged documents—to further the fraudulent and
13 extortionate scheme. Defendants’ criminal conduct was intended to conceal and
14 destroy incriminating evidence and create false evidence. Defendants further intended
15 to defraud the court and others into relying on the various forgeries—“Version 2,” the
16 Cover Letter, and the La Cienega PMA—to the detriment of Plaintiffs and to force
17 Plaintiffs to capitulate to Defendants’ fraudulent and extortionate scheme by erasing
18 evidence disproving Defendants’ perjurious stories.

19 **L. AEW Files a Motion for Terminating Sanctions Based on the**
20 **Extensive Evidence of the Forgery, Fabrication, Manipulation,**
21 **Concealment, and Destruction of Evidence**

22 139. Based upon the substantial and largely uncontroverted evidence of the
23 forgery, fabrication, manipulation, concealment, and destruction of evidence
24 uncovered by the forensic examination of Shekhter’s and the other Lincoln Studios
25 Plaintiffs’ hard-copy documents and forensic devices, as described in Paragraphs 72-
26 138, *supra*, AEW and the other Lincoln Studios Defendants filed a Motion for
27 Terminating and Other Sanctions in the Lincoln Studios Litigation (the “Sanctions
28 Motion”) on September 21, 2015. The Sanctions Motion presented in detail the

1 documentary evidence, factual evidence, and forensic evidence of wrongdoing and
2 perjury by Shekhter, NMS Capital, and their affiliates, and the prejudice this caused.
3 The Sanctions Motion sought dismissal of the TAC, judgment in AEW's favor against
4 NMS Capital on the Cross-Complaint for declaratory and injunctive relief, and
5 monetary sanctions.

6 140. Not deterred by the extensive evidence uncovered by the court-ordered
7 forensic examination, Shekhter, NMS Capital, and the other Lincoln Studios Plaintiffs
8 continued relying on the forged "Version 2." On February 23, 2016, in furtherance of
9 the fraudulent and extortionate scheme, Neil Shekhter submitted yet another perjurious
10 declaration in the Lincoln Studios Litigation in opposition to the Sanctions Motion,
11 standing by his forgeries and lies. Specifically, in Paragraph 26 of the declaration,
12 Shekhter stated: "Once I received the full version of the JVA, I saw that Section 11
13 granted a 'Buy/Sell' right five years after formation of the Joint Venture, as opposed to
14 three years to which we agreed. I spoke with Mr. Samek on or shortly before
15 September 14, 2010 and brought the error to Mr. Samek's attention. He acknowledged
16 that the provision was inaccurate and said he would fix it by changing Section 11's
17 Buy/Sell from a 5-year term to a 3-year term." In Paragraph 28, Shekhter stated: "Mr.
18 Samek fixed the mistake in 'Version 1' and sent me 'Version 2' of the JVA"
19 Shekhter attached the forged "Version 2" to his February 23, 2016 declaration. These
20 sworn statements were knowingly false and misleading. On or about February 23,
21 2016, Miller and Zelig, acting on behalf of Shekhter, NMS Capital, and the other
22 Lincoln Studios Plaintiffs, caused the perjurious declaration to be sent via overnight
23 delivery to Gibson Dunn.

24 141. The parties briefed the Sanctions Motion extensively and participated in
25 an 8-day evidentiary hearing before the Los Angeles Superior Court.
26
27
28

**M. Shekhter Disseminates the Sham Complaint in the Lincoln Studios
Litigation and Makes False and Misleading Representations to Third
Parties in an Attempt to Further the Extortionate Scheme**

142. The filing of sham complaints and declarations was only one part of Defendants' fraudulent and extortionate scheme. Having filed the forged "Version 2" in the Lincoln Studios Litigation and having asserted sham claims based on it, Defendants sought to increase the economic pressure by disseminating the forgery and their sham complaints to third parties, under the guise of providing "notice" of a pending lawsuit. As always, however, Defendants' real goal was to inflict maximum economic damage on Plaintiffs and induce the reasonable fear of further economic loss by disrupting virtually all of their existing and prospective economic relationships.

143. On or about March 16, 2016, Miller, on behalf of Neil Shekhter, NMS Properties, and NMS Capital, sent a letter via email and certified mail through the U.S. Postal Service to representatives of AEW CM and AEW P6's auditor, Pricewaterhouse Coopers LLP ("PwC"), and the Joint Venture and Subsidiary Companies' tax preparer, Goodwin Partners LLP ("Goodwin"), both located in the State of Massachusetts, attaching a copy of the TAC in the sham Lincoln Studios Litigation. In the letter, Miller represented to PwC and Goodwin that the knowingly false and misleading "information" in the TAC "is critical to your audit," and "should be reflected in PwC's audit and in Goodwin's financial and tax reporting." Upon information and belief, Defendants directed Miller to send the letter and complaint to AEW CM's auditor and accountant, knowing they contained false and misleading statements, with the intent that PwC and Goodwin would rely on Defendants' false and misleading statements to the detriment of the Investor Member and other Plaintiffs, and with the intent to disrupt Plaintiffs' prospective relationships with these firms through these harassing emails. As a direct and proximate result of Miller's false and misleading letter, Plaintiffs suffered damages.

144. On or about March 28, 2016, Miller, on behalf of Neil Shekhter, NMS Properties, and NMS Capital, sent a letter via email and certified mail through the U.S. Postal Service to representatives of various Joint Venture lenders—Comerica Bank, KeyBank, Berkadia Commercial Mortgage LLC (located in Virginia), PNC Bank, NA, and PNC Real Estate (collectively, the “Joint Venture Lenders”). In the letter, Miller falsely represented that Neil Shekhter “did not forge anything” and that “Samek . . . created [Version 2] and sent it to Mr. Shekhter”—statements that Defendants knew to be false. Upon information and belief, Defendants directed Miller to send the letter to the Joint Venture Lenders, knowing it contained false and misleading statements, with the intent that the Joint Venture Lenders would rely on those false and misleading statements to the detriment of Plaintiffs, including disrupting Plaintiffs’ prospective relationships with the Joint Venture Lenders to make it impossible to refinance the Joint Venture’s debts unless Plaintiffs capitulated to Defendants’ fraudulent and extortionate scheme. As a direct and proximate result of Miller’s false and misleading letter, Plaintiffs suffered damages.

N. The Court Sustains the AEW Defendants’ Demurrers to Defendants’ Sham Complaint in the Lincoln Studios Litigation

145. As set forth above, on or about April 5, 2016, the court in the Lincoln Studios Litigation issued a ruling sustaining the demurrers of the Lincoln Studios Defendants to all causes of action in the TAC without leave to amend and ordering them to prepare and serve a proposed order (the “April 5 Ruling”). On or about June 8, 2016, the court issued an order adopting its April 5 Ruling (the “June 8 Order”).

146. In the April 5 Ruling, the court held that, on its face, Article 6 of the JVA pertained to “distributions” and “does *not* provide [NMS] with a right to monetize or take-out Investor Member’s interest.” (Emphasis in original.) The court continued, “Section 6.1(b)(vii) does not make any mention of a buy-out, take-out, or monetization of *Investor Member’s* interest” and Plaintiffs’ reading of Section 6 “is contradicted by the other terms of the [JVA].” The court separately held that the TAC was a “sham

pleading,” in which the Lincoln Studios Plaintiffs sought to avoid the problems in the SAC, including its reliance on the forged “Version 2,” by “omitt[ing] certain facts” in the TAC and/or pleading facts that were inconsistent with prior allegations—in other words, pretending that the forged “Version 2” did not exist and was not the basis for the Lincoln Studios Plaintiffs’ claims in the hope of avoiding the consequences of the forgery.

147. As a result of the April 5 Ruling and June 8 Order, the only claims that remained in the Lincoln Studios Litigation were the Investor Member’s Cross Claims.⁷

**O. Notwithstanding the April 5 Ruling, Shekhter Continues
Disseminating False and Misleading Statements to Third Parties to
Perpetuate the Fraudulent and Extortionate Scheme**

148. The court’s April 5 Ruling did not deter Defendants from continuing to disseminate their sham complaint to third parties under the guise of providing “notice”—even though the Lincoln Studios Plaintiffs no longer had any pending claims in the Lincoln Studios Litigation about which they could provide any legitimate notice.

149. On or about June 2, 2016, Miller, on behalf of Neil Shekhter, NMS Properties, and NMS Capital, sent a letter via email and certified mail through the U.S. Postal Service to representatives of Eastdil Secured, LLC, the listing agent (the “Listing Agent”) for the Joint Venture’s portfolio of Properties, which Plaintiffs were trying to market for sale. In the letter, Miller falsely represented that “AEW has no right, or authority, to engage you and your company to market this portfolio,” and

⁷ On November 6, 2015, the Investor Member filed a Cross Complaint against NMS Capital seeking injunctive relief and declaratory relief. In particular, the Investor Member sought a judgment declaring that the as-amended Agreement is operative, that “Version 2” is a forgery, that NMS Capital breached the Agreement, and that the Investor Member was within its rights to both sell the Properties in its sole discretion and remove NMS Capital as the Operating Member. The Cross Complaint also sought injunctive relief prohibiting NMS Capital from continuing to breach the Agreement and prohibiting NMS Properties from continuing to breach the PMAs.

1 threatened to “hold [the Listing Agent and its representatives] responsible and liable
2 for interference . . . , exposing you to in excess of \$500 million in damages.” Miller
3 also demanded that the Listing Agent “inform any prospective purchasers about,” *inter*
4 *alia*, the sham Lincoln Studios Litigation and “NMS’ claims” therein—even though
5 *the court’s April 5 Ruling had sustained demurrers to all of the Lincoln Studios*
6 *Plaintiffs’ claims*. Upon information and belief, Defendants directed Miller to send the
7 letter to the Listing Agent, knowing it contained false and misleading statements, with
8 the intent that the Listing Agent would rely upon them to the detriment of Plaintiffs
9 and to make it impossible for Plaintiffs to sell the Joint Venture Properties unless they
10 capitulated to Defendants’ fraudulent and extortionate scheme by threatening the
11 Listing Agent tasked with pursuing a valid sale.⁸ As a direct and proximate result of
12 Miller’s false and misleading letter, Plaintiffs suffered damages.

13 150. On or about June 24, 2016, even as he continued to dispute the
14 authenticity of the JVA and Plaintiffs’ rights thereunder, Neil Shekhter sent the
15 Investor Member, AEW CM, and DLA a purported “Buy/Sell Offer Notice Pursuant to
16 Section 11 of the JVA, dated September 8, 2010” (the “Alleged Notice”). In the
17 Alleged Notice, Shekhter, on behalf of NMS Capital, purported to “provide[] notice of
18 [its] exercise of its Buy/Sell offer in the amount of US \$500 million” “[p]ursuant to
19 Section 11.1” of the JVA—an agreement the authenticity and validity of which
20 Shekhter was then contesting in the sham Lincoln Studios Litigation. This Alleged
21 Notice was sent by email and certified mail through the U.S. Postal Service to the
22
23

24
25 ⁸ On or about June 21, 2016, in furtherance of Defendants’ tortious scheme, Adam
26 Shekhter handed out copies of the false and misleading letter to representatives of
27 the Listing Agent and Invesco Real Estate (“Invesco”), who were, at the time,
28 touring the Properties as a potential buyer. Upon information and belief, Neil
Shekhter directed Adam Shekhter to give copies of the letter to the Listing Agent
and Invesco with the intent to disrupt the sale of the Properties and thus further the
extortionate scheme. As a direct and proximate result of the distribution of Miller’s
false and misleading letter, Plaintiffs suffered damages.

Investor Member in Massachusetts, AEW CM, and the former attorneys for the Investor Member, also located in Massachusetts.

151. Even leaving aside Shekhter's and NMS Capital's repudiation of the JVA and fabrication of a forgery, the Alleged Notice was ineffective. First, the Alleged Notice was defective on its face. Pursuant to Section 11.1(a)(ii), a valid Buy/Sell Offer Notice "shall include the Initiating Member's calculation of the Sale Price and Buy Price." However, as another Los Angeles Superior Court later held when NMS Capital attempted to compel "specific performance" of its alleged Buy/Sell rights, the Alleged Notice "reveals no Sale or Buy Price calculation" and "does not conform to a mandatory term" of the JVA. Second, NMS Capital had forfeited its Buy/Sell rights through its misconduct. As the court found in the Lincoln Studios Litigation, NMS Capital had committed multiple "Removal Events" under the JVA, and Section 11.1(a)(i) prohibits the Operating Member from giving a Buy/Sell Offer Notice "at any time after the occurrence of a Removal Event."

152. On or about June 29, 2016, Miller, on behalf of NMS Properties and NMS Capital, sent a letter via email and certified mail through the U.S. Postal Service to three representatives of Invesco, a potential buyer of the Joint Venture's portfolio of Properties ("Potential Buyer No. 1"), attaching a copy of Defendants' knowingly false and misleading complaint in the sham Lincoln Studios Litigation. Two of these representatives are located in Georgia. Miller also sent a copy to a representative of Gibson Dunn, a representative of AEW CM, and an attorney for the Listing Agent in New York. In the letter, Miller falsely represented that "AEW has no right to sell, transfer, assign, hypothecate or otherwise encumber all or any part of the JV Properties," and that "AEW's interest in the Joint Venture [is] zero." In addition, Miller misleadingly described the TAC as the "operative complaint," and purported to put Potential Buyer No. 1 on notice that his clients will hold it "responsible for interference and conspiracy, exposing your organization[] to over \$500 million in damages," if it does not "immediately cease and desist from interfering with the

1 contractual rights of our clients by attempting to purchase the JV Portfolio.” Upon
2 information and belief, Defendants directed Miller to send the letter and sham
3 complaint to Potential Buyer No. 1, knowing they contained false and misleading
4 statements, with the intent that Potential Buyer No. 1 would rely on them to the
5 detriment of Plaintiffs and to disrupt any potential sale to Potential Buyer No. 1.

6 153. On or about June 29, 2016, Miller, on behalf of NMS Capital and NMS
7 Properties, sent another letter via email and certified mail through the U.S. Postal
8 Service to representatives of First American Title Insurance Company, Fidelity
9 National Financial in Florida, Stewart Title Insurance Guaranty in Texas, Old Republic
10 Insurance Company, North American Title Insurance Company, Chicago Title
11 Insurance Company, Investors Title Company in Illinois, Land America Financial
12 Group, Attorney’s Title Insurance Funds, Inc. in North Carolina, Lawyer’s Title
13 Insurance Corporation in Nebraska, Westcor Land Title Company, Ticor Title, United
14 General Title Insurance Company, and Commonwealth Land Title Insurance
15 Company, which together constituted most if not all of the major title insurance
16 companies in the United States (collectively, the “Prospective Title Insurers”),
17 attaching a copy of Defendants’ knowingly false and misleading complaint in the sham
18 Lincoln Studios Litigation. Miller also sent a copy to an attorney for the Listing Agent
19 located in New York. In the letter, Miller falsely represented that “AEW has no right
20 to sell, transfer, assign, hypothecate or otherwise encumber all or any part of the JV
21 Properties,” and that “AEW’s interest in the Joint Venture [is] *zero*.” In addition,
22 Miller misleadingly described the TAC as the “operative complaint,” and purported to
23 put the Prospective Title Insurers on notice that “NMS will hold [them and their
24 representatives] responsible and liable for . . . potentially hundreds of millions in
25 compensatory and punitive damages” if they “provide title insurance for, facilitate, or
26 in any way participate in the sale of the JV Properties.” Upon information and belief,
27 Defendants directed Miller to send the letter and sham complaint to the Prospective
28 Title Insurers, knowing they contained false and misleading statements, with the intent

1 that the Prospective Title Insurers would rely on them to the detriment of Plaintiffs and
2 refuse to issue title insurance in connection with the sale or refinancing of any of the
3 Joint Venture Properties. At the time that Miller's June 29, 2016 letter was sent,
4 Plaintiffs had already secured a commitment from one of the Prospective Title Insurers
5 to issue title insurance in connection with the sale of the Joint Venture Properties.
6 However, after receiving a copy of Miller's June 29, 2016 letter, that title insurance
7 company informed Plaintiffs that it would no longer honor its commitment because of
8 Miller's June 29, 2016 letter. Plaintiffs were unable to obtain title insurance for any
9 sale after that time, making the sale of the Properties much more difficult by making it
10 impossible to obtain lender financing, and were injured as a direct result of the June
11 29, 2016 letter and Defendants' fraudulent and extortionate scheme to the tune of many
12 millions of dollars.

13 154. Also on or about June 30, 2016, Miller, on behalf of NMS Capital and
14 NMS Properties, sent a letter via email and certified mail through the U.S. Postal
15 Service to representatives of Douglas Emmett, another potential buyer of the Joint
16 Venture's portfolio of Properties ("Potential Buyer No. 2"), attaching a copy of
17 Defendants' knowingly false and misleading complaint in the sham Lincoln Studios
18 Litigation. Miller also sent a copy to an attorney for the Listing Agent located in New
19 York. In the letter, Miller falsely stated that "AEW has no right to sell, transfer,
20 assign, hypothecate or otherwise encumber all or any part of the JV Properties." In
21 addition, Miller misleadingly described the TAC as the "operative complaint," and
22 purported to put Potential Buyer No. 2 on notice that it "could face legal exposure and
23 liability to our clients for hundreds of millions of dollars in compensatory and punitive
24 damages for interfering with our clients' contractual rights and prospective economic
25 benefit," if it "continues its efforts to purchase the JV Properties." Upon information
26 and belief, Defendants directed Miller to send the letter and sham complaint to
27 Potential Buyer No. 2, knowing they contained false and misleading statements, with
28

1 the intent that Potential Buyer No. 2 would rely on them to the detriment of Plaintiffs,
2 and to disrupt any potential sale to Potential Buyer No. 2.

3 155. On or about June 30, 2016, Miller, on behalf of Neil Shekhter, NMS
4 Properties, and NMS Capital, also sent a letter via email and certified mail through the
5 U.S. Postal Service to three executives with Equity Residential (“Potential Buyer
6 No. 3”), another potential buyer of the Joint Venture’s portfolio of properties, attaching
7 a copy of Defendants’ knowingly false and misleading complaint in the sham Lincoln
8 Studios Litigation. Miller also sent a copy to an attorney for the Listing Agent located
9 in New York. In the letter, Miller falsely stated that “AEW has no right to sell,
10 transfer, assign, hypothecate or otherwise encumber all or any part of the JV
11 Properties,” and purported to put Potential Buyer No. 3 and its executives on “notice
12 that you and your company could face legal exposure and liability to our clients for
13 hundreds of millions of dollars in compensatory and punitive damages for interfering
14 with our clients’ contractual rights and prospective economic benefit.” Miller further
15 warned that “if Equity Residential continues its efforts to purchase the JV Properties,
16 our clients will hold Equity Residential responsible for this interference, exposing you
17 and your company to over \$500 million in damages.” Upon information and belief,
18 Defendants directed Miller to send the letter and sham complaint to Potential Buyer
19 No. 3, knowing they contained false and misleading statements, with the intent that
20 Potential Buyer No. 3 would rely on them to the detriment of Plaintiffs, and to disrupt
21 any potential sale to Potential Buyer No. 3.

22 156. On or about July 18, 2016, Samek of AEW sent a letter to KeyBank,
23 asking that the bank extend the maturity dates of three loans relating to the Joint
24 Venture’s Properties at 1420 5th Street, 9901 Washington Boulevard, and 1430 5th
25 Street, in order to facilitate the sale of those Properties. Shortly thereafter, on or about
26 July 26, 2016, Miller, on behalf of NMS Properties, NMS Capital, and Neil Shekhter,
27 sent a letter via email and overnight mail through Federal Express to representatives of
28 KeyBank in Colorado and Utah, attaching a copy of the knowingly false TAC in the

1 sham Lincoln Studios Litigation. In the letter, Miller disputed that “the extensions of
2 the Loans” were being done to facilitate the sale of the Properties, falsely stating that
3 “AEW has no right to sell, transfer, assign, hypothecate or otherwise encumber all or
4 any part of the JV Properties,” and warning that NMS “will sue any prospective
5 purchaser that interferes with NMS’ rights to purchase the Properties.” Upon
6 information and belief, Defendants directed Miller to send the letter and sham
7 complaint to KeyBank, knowing they contained false and misleading statements, with
8 the intent that KeyBank would rely on them to the detriment of the Investor Member.
9 As a direct and proximate result of Miller’s false and misleading letter, KeyBank
10 refused to extend the maturity date on the loans, causing the Joint Venture to go into
11 default and incur more than \$1 million in forbearance fees, default interest, and legal
12 fees.

13 157. On or about September 26, 2016, Shekhter sent a letter via certified mail
14 through the U.S. Postal Service to thirty-seven entities that Shekhter believed invested
15 in AEW P6, including representatives in the states of Mississippi, New York, Virginia,
16 Massachusetts, Louisiana, Texas, Tennessee, Washington D.C., Ohio, Pennsylvania,
17 Georgia, Indiana, and Michigan. Shekhter, who, along with his Co-Conspirators, had
18 caused several Joint Venture Property loans to go into default as a result of their
19 fraudulent and extortionate scheme, confirmed in the letter that he was trying to use the
20 defaults to instill fear that AEW would face potential financial ruin if it did not give in
21 to the extortionate demand to sell the Properties to him. Writing to investors of AEW
22 as part of this scheme, Shekhter emphasized that the loans “are due,” that they “are
23 secured by the JV Properties,” that one bank “won’t extend the maturity date and has
24 put the loans in default,” and that defaults “create a substantial risk to your . . .
25 investment.” Shekhter also made several false, fraudulent, and misleading statements
26 in the letter, including the claim that he had the “right” to buy “the portfolio” (he did
27 not) and that he offered to buy “the portfolio” for \$500 million (he had not, nor could
28 he). Shekhter’s “offer” had been to buy AEW’s interest in the Joint Venture and to

1 pay AEW tens of millions of dollars less than it was entitled to while still suing AEW
2 for all of that money back and more. Shekhter also attached to his letter a copy of the
3 knowingly false TAC in the sham Lincoln Studios Litigation. Upon information and
4 belief, Defendants approved Shekhter's letter, knowing it contained false and
5 misleading statements, with the intent that these investors would rely on them to the
6 detriment of Plaintiffs, and for the purpose of causing reasonable fear of economic loss
7 of the part of Plaintiffs.

8 **P. In Furtherance of Defendants' Scheme, NMS Properties Refuses to**
9 **Cooperate with its Termination, Refuses to Vacate the Properties, and**
10 **Misappropriates the Joint Venture's Funds and Property**

11 158. NMS Properties was terminated as the property manager of the Joint
12 Venture's Properties as of June 10, 2015. Among other things, NMS Properties was
13 required upon termination to deliver (1) a "final accounting, reflecting the balance of
14 income and expenses" of the Properties; (2) "[a]ny balance of monies of Owner or
15 tenant security deposits, or both, held by Manager with respect to the Property"; and
16 (3) all "records, contracts, leases, tenant correspondence, files," and all other
17 "information which pertain in any way to the Property." It did none of these things.

18 159. Since its termination, NMS Properties, under the direction and control of
19 its CEO Shekhter and President Margot Shekhter, has continued to collect rents for all
20 Properties except 9901 Washington, has continued to hold itself out as the property
21 manager at all Properties except 9901 Washington, has refused access to the books,
22 records, and accounts of the Joint Venture Properties, has refused to vacate the Joint
23 Venture Properties and has refused to surrender the rents it collected after being
24 terminated as property manager despite being instructed to do so by the Joint Venture
25 and Subsidiary Companies. Pursuant to the termination of the PMAs, all rents and
26 monies collected by NMS Properties following the effective date of its termination
27 belong to the Joint Venture and Subsidiary Companies. As such, NMS Properties has
28 no right to retain, withhold, spend, or otherwise control money it wrongfully collected

1 while holding itself out as property manager without the authorization or consent of the
2 Subsidiary Companies or Joint Venture.

3 160. Upon information and belief, NMS Properties, under the control and
4 direction of Shekhter and Margot Shekhter, wrongfully occupied the Properties,
5 misappropriated Joint Venture money, and refused to transition to a new property
6 manager for the purpose of harming AEW and inducing the reasonable fear of further
7 economic harm if AEW does not accede to Defendants' fraudulent and extortionate
8 demands. Physically occupying the Properties, refusing to vacate the Properties,
9 refusing to transfer or grant access to the Joint Venture's funds and bank accounts, and
10 refusing to hand over or grant access to the Joint Venture's books and records for the
11 Properties were yet other elements of the extortionate scheme to prevent Plaintiffs
12 from marketing or selling the Properties by making it impossible for Plaintiffs or any
13 potential buyers to conduct crucial due diligence, such as inspection of books and
14 records or the Properties themselves. By denying Plaintiffs this access, Defendants
15 attempted to ensure that no one except Defendants would be comfortable buying the
16 Properties. These tactics went hand in hand with Defendants' successful threats to
17 Prospective Title Insurers, which made it even more difficult to find a third-party
18 buyer for the Properties because it was impossible for the Joint Venture to obtain title
19 insurance, making it impossible to finance a sale transaction with a bank loan.
20 Defendants' goal was to foreclose all sale options except the forced sale to NMS by
21 denying access for due diligence and closing off the most obvious source of financing.
22 In the end, the Joint Venture was able to find a qualified and willing buyer, but as a
23 result of these extortionate acts, the Joint Venture was forced to use seller financing
24 and absorb the resulting loss on the value of the sale which, by current estimates,
25 caused millions of dollars in damages.

Q. As a Direct Result of Defendants' Tortious and Criminal Conduct, the Joint Venture is Forced to Sell the Properties on Materially Worse Terms and at a Substantially Reduced Price

161. On or about October 31, 2016, notwithstanding Defendants' criminal and tortious conduct, the Subsidiary Companies entered into a Purchase and Sale Agreement for sale of the Joint Venture's portfolio of Properties. The Joint Venture Properties were sold to third parties (the "Buyers") following an extensive marketing process conducted by the Listing Agent, a highly qualified real estate brokerage firm retained by the Joint Venture to market and sell the Joint Venture Properties to the most qualified buyer in the marketplace. However, as a result of Defendants' criminal and tortious conduct, fewer prospective buyers were willing to make offers, adversely impacting the true market value of the Properties.

162. In or around June 2016, shortly after the Listing Agent began undertaking efforts to market and sell the Properties, Defendants launched a full-scale campaign of harassment and intimidation designed to interfere with the marketing and sale of the Properties. As set forth above, Defendants, through their counsel, disseminated copies of the forged "Version 2" and the sham complaint in the Lincoln Studios Litigation to prospective lenders, Prospective Title Insurers, and Potential Buyers, made knowingly false and defamatory statements regarding Plaintiffs' right to market and sell the Properties to the prospective lenders, Prospective Title Insurers, and Potential Buyers, and baselessly threatened the prospective lenders, Prospective Title Insurers, and Potential Buyers with hundreds of millions of dollars in potential liability if they participated in the sale and marketing of the Properties. As a direct and proximate result of Defendants' false and misleading statements, none of the Prospective Title Insurers were willing to provide title insurance, including at least one of the Prospective Title Insurers that had previously agreed to provide title insurance. Defendants embarked on these acts with the intent that these third parties would rely on Defendants' false and misleading statements to the detriment of Plaintiffs, in an

1 attempt to prevent a sale of the Joint Properties and imminent default on Joint Venture
2 loans unless Plaintiffs capitulated to Defendants' fraudulent and extortionate scheme.

3 163. As a direct result of Defendants' conduct, Plaintiffs suffered serious
4 damages.

5 **R. The Court in the Lincoln Studios Litigation Issues Terminating and**
6 **Monetary Sanctions Against Defendants**

7 164. On July 29, 2016, after extensive briefing by the parties, the court
8 preliminarily granted AEW's Spoliation Motion, finding that NMS, Shekhter, and their
9 affiliates engaged in "purposeful, bold, breathtaking violations of this Court's Orders
10 that [were] UNDISPUTED and ADMITTED," but subject to a later evidentiary
11 hearing. The court found that "Plaintiffs' own evidence and/or undisputed facts
12 establish violations of the court's [Freeze] and [Forensic Examination] orders." The
13 court further found that Shekhter manipulated and replaced his computer hard drive
14 "before the scheduled forensic examination" and "[b]y his own admission" destroyed
15 this and other evidence "with the admitted intention of preventing the forensic
16 expert(s) from discovering deleted files." In addition, the court found that Shekhter
17 failed to produce external devices such as the USB drive, that Shekhter admitted to
18 intentionally deleting a zip drive containing relevant documents before the forensic
19 examination, and that the IT Administrator for NMS Properties admitted to removing
20 Adobe Acrobat from Adam Shekhter's computer and using Eraser Portable on an NMS
21 computer.

22 165. The court ordered an evidentiary hearing to determine the full extent of
23 misconduct and the specific sanctions to be imposed. That evidentiary hearing began
24 on October 14, 2016 and continued for eight days over the following three weeks.
25 AEW presented extensive testimony about the forgery, fabrication, and destruction of
26 evidence by Shekhter and the other Lincoln Studios Plaintiffs. Gerald LaPorte, a
27 document forensic expert trained by the U.S. Secret Service who now works in the
28 Department of Justice testified that "Version 2," the Cover Letter, and the La Cienega

1 PMA were not authentic, and that the forgeries by Shekhter and NMS were “so blatant
2 . . . that you would do a presentation on [it] or write [about it] in a text book.” Samuel
3 Rubin, an expert in electronic forensics who has performed thousands of forensic
4 investigations, characterized the forgery, fabrication, and destruction of evidence by
5 Shekhter and NMS as “almost like a case study in antifoensic measures.” After the
6 conclusion of the evidentiary hearing, on November 22, 2016, the court issued a 94-
7 page Order detailing the overwhelming evidence of misconduct (the “Sanctions
8 Order”) and finding the following:

9 ‘Version 2’ was created by Neil Shekhter and his son Adam Shekhter in
10 July 2013 [and] ‘Version 2’ is not an authentic document. It is a
11 forgery. . . . Two versions of the ‘La Cienega PMA’ were created on June
12 24, 2015, and both were fabrications. . . . The ‘Cover Letter’ was created
13 by Plaintiffs in 2015, not sent by Mr. Samek to NMS in September 2010
14 [and] Neil Shekhter’s refusal to testify at the Evidentiary hearing
15 regarding these matters confirms there is no credible explanation other
16 than forgery.

14 166. A copy of the Sanctions Order is attached hereto as **Exhibit 4**. The court
15 found unequivocally that “Version 2” and the 3-year Buy/Sell term contained therein is
16 a forgery. As the court noted, AEW provided “ample testimony” and “extensive
17 contemporaneous documentary evidence” that the 5-year Buy/Sell—not the 3-year
18 Buy/Sell—was agreed to by the parties, and NMS’ own witnesses confirmed that it
19 was NMS’ own request for a 5-year Buy/Sell, which was accepted by the parties and
20 executed. “[M]ultiple witnesses” also confirmed the validity of the Specified
21 Properties Amendments, which were consistently relied upon by the parties. NMS’
22 only testimony to the contrary was Shekhter’s “self-serving declaration,” which “the
23 Court finds not to be credible.” The court’s findings were extensive:

- 24 • “Version 2” was forged in July 2013 by Shekhter and his son Adam Shekhter;
- 25 • NMS’ “arguments to the contrary are not convincing or credible;”
- 26 • The fact that neither Shekhter nor Adam testified at the hearing “only confirms
27 that there is no viable alternative explanation;” and
- 28 • NMS’ own expert witnesses did not confirm the authenticity of “Version 2.”

1 167. The court also determined that the La Cienega PMA is a forgery, that
2 Shekhter and NMS provided no credible explanation for the document's sudden
3 appearance, for the initial botched forgery, or for any of the other hallmarks of forgery
4 surrounding its origins. There was also "extensive other evidence that the parties did
5 not agree to the" forgery, including the requirements of the JVA, the Form PMA, and
6 the approved draft La Cienega PMA, all of which contained the 30-day notice
7 provision. None of Plaintiffs' experts opined that the La Cienega PMA was authentic,
8 and NMS' own former Vice President of Finance confirmed the parties used a "form"
9 PMA with the 30-day notice provision.

10 168. The court also found that the Cover Letter that Shekhter claimed
11 accompanied "Version 2" in 2010 was a forgery, that Shekhter attempted repeatedly to
12 backdate it, and that NMS provided no explanation as to how this "fatal" letter was
13 never produced or even alluded to until over five years after Shekhter alleged he
14 received it. As the court noted, "Neil Shekhter's refusal to testify at the Evidentiary
15 Hearing regarding these matters confirms there is no credible explanation other than
16 forgery."

17 169. The Court's findings regarding the spoliation, forgery, and fabrication of
18 evidence by Defendants was far-reaching: Defendants manipulated Shekhter's
19 computer, which was "indisputably a critical piece of evidence;" they misled the court
20 about their preservation of evidence; they willfully and repeatedly violated court
21 Orders; they acted intentionally to conceal and destroy relevant evidence; they
22 concealed the computer used to create "Version 2," which was "another critical piece
23 of evidence;" and they "engaged in an extensive plan to alter, conceal, destroy, or
24 manipulate evidence in violation of the Court's [orders]." As the court put it, "[t]he
25 fact that Neil and Alan Shekhter, NMS' IT Administrator, Enrique Sanchez, and NMS'
26 own forensic expert, Scott Cooper, were all present at NMS' offices" when Shekhter's
27 computer was backdated and flooded with over 60,000 files minutes before the Court-
28 ordered forensic examination began "is, quite frankly, shocking." In fact, Cooper

1 agreed with this sentiment, testifying on the stand that, as a forensics expert, he “would
2 not advise somebody” to do what Shekhter did, and that the actions taken by Shekhter
3 were a “dumb . . . [b]ad idea.”

4 170. In addition to forgery and the destruction of evidence, the court also
5 detailed how Shekhter and Defendants repeatedly “provided false testimony under oath
6 in order to mislead the Court and cover up their own misconduct,” found that each of
7 Defendants’ expert witnesses lacked credibility or were unconvincing, found that the
8 credibility of NMS’ potential witnesses were all “undermined by their failure to appear
9 and testify,” and found that AEW “easily” showed the prejudice they suffered as a
10 result of NMS’ massive misconduct, which “constitutes prejudice of the highest
11 magnitude.”

12 171. On December 1, 2016, the court issued the Final Judgment dismissing the
13 Lincoln Studios Plaintiffs’ Third Amended Complaint on two grounds: first, by
14 granting the demurrer to the TAC, as discussed above, in part because the TAC was a
15 sham pleading and because the JVA had no “buy out” right; and second, as a
16 terminating sanction for the forgery, fabrication, and spoliation of evidence, as detailed
17 in the Sanctions Order. All of NMS’ affirmative claims in the Lincoln Studios
18 Litigation were squarely rejected: there was no “buy out” right in the JVA, “Version
19 2” is a forgery, the JVA as amended reflects the Specified Properties Amendments, and
20 NMS has lost its Buy/Sell rights.

21 172. On December 2, 2016, after conducting a prove-up hearing, the Court
22 issued the Amended Default Judgment (“Default Judgment”), striking NMS’ Answer
23 to AEW’s Cross-Complaint, entering judgment in AEW’s favor, and granting over \$6
24 million in attorneys’ fees and costs to AEW. A true and correct copy of the Default
25 Judgment is attached hereto as **Exhibit 5**.

26 173. In the Default Judgment, the court found that the operative JVA is the as-
27 amended JVA containing a 5-year Buy/Sell Provision and the Specified Properties
28 Amendments (attached hereto as Exhibit 2); that the so-called “Version 2” “is a

1 fabrication and forgery”; that the Investor Member has the authority to sell the Joint
2 Venture Properties “in its sole and absolute discretion”; that NMS Capital repeatedly
3 breached the JVA, including through a “broad variety of fraudulent conduct,
4 misrepresentations, and forgeries”; that NMS committed multiple Removal Events and
5 Events of Default; that NMS Capital was properly removed as the Operating Member
6 of the Joint Venture; that NMS had lost its right to invoke the Buy/Sell rights in
7 Section 11.1; that the PMAs were rightfully terminated; and that NMS Capital had lost
8 its right to collect certain distributions under the JVA. The court also granted the
9 Cross-Complaint’s request for injunctive relief, and “enjoined [NMS] from continuing
10 to breach the JVA.” These findings also made clear that NMS’ affirmative claims
11 were completely without merit—in addition to the Demurrer Order’s finding that there
12 is no “buy out” right in the JVA, NMS also has no authority to interfere with the sale
13 of the Properties, is no longer the Operating Member, and cannot wrongfully exclude
14 AEW from the Properties.

15 **S. Defendants Continue Their Fraudulent and Extortionate Scheme**

16 174. While the Lincoln Studios and Property Management Litigations were
17 still ongoing, and in order to inflict maximum pressure on Plaintiffs, Defendants also
18 initiated a series of copycat lawsuits involving the same false and misleading
19 allegations regarding the authenticity and validity of the JVA and Plaintiffs’ rights
20 thereunder. Defendants have filed the copycat lawsuits without regard to the merits of
21 their claims and for the purpose of perpetuating the fraudulent and extortionate scheme
22 and ensuring that it continues indefinitely into the future. This tactic is exactly the
23 approach Defendants’ counsel threatened to take if Plaintiffs did not give in to
24 Defendants’ extortionate demands—to sue AEW until it breaks.

25 175. Defendants themselves reiterated this threat in an August 8, 2016 letter
26 from Shekhter to representatives of AEW CM in Massachusetts as well as an attorney
27 for the Listing Agent in New York via both email and U.S. Mail. In the letter,
28 Shekhter expressly warns that “*[o]ne way or another, I intend to pay-back and/or buy-*

1 out AEW and get AEW and its AEW Fund VI investors out of this portfolio,” and that
2 “[y]our [AEW’s] best case scenario is years of litigation before there is any finality or
3 resolution.” (Emphases added.)

4 176. True to their word, in lawsuit after lawsuit, Defendants have advanced
5 objectively baseless, frivolous, and already rejected arguments regarding NMS’ non-
6 existent “buy out rights,” relying on the forged “Version 2,” and denying its own well-
7 established misconduct—all for the purpose of injuring Plaintiffs and instilling the fear
8 of economic loss on the part of Plaintiffs. Indeed, Defendants have continued to file
9 sham lawsuits and sham amendments in their existing lawsuits even after the
10 judgments in the Lincoln Studios Litigation confirmed that “Version 2” was a forgery,
11 that NMS did not have a “buy out right,” and that NMS, rather than AEW, had
12 committed numerous Events of Default under the JVA. Upon information and belief,
13 Defendants authorized and directed the filing of the sham copycat lawsuits without
14 regard to their merits and for the purpose of causing a reasonable fear of economic loss
15 on the part of Plaintiffs, and with the intent that the courts in those cases would rely on
16 the false and misleading allegations to the detriment of Plaintiffs. As of the filing of
17 this Complaint, Defendants continue to prosecute these sham lawsuits, continue to rely
18 on and submit the proven forgeries to courts, and have authorized and directed the
19 filing and pursuit of the frivolous appeal of the sham Lincoln Studios Litigation.

20 **T. Defendants Wrongfully Sue the Buyers of the Joint Venture**
21 **Properties and Falsely Instruct Tenants to Pay Defendants the Rent**
22 **Owed to the Buyers**

23 177. In furtherance of their fraudulent and extortionate scheme, on December
24 1, 2016, Defendants sued the Buyers of the Joint Venture Properties, wrongfully
25 claiming to be the rightful owners of the Joint Venture Properties. *Shekhter, et al. v.*
26 *Wong, et al.*, Case No. SC126760 (L.A.S.C., filed December 1, 2016) (“Buyer
27 Litigation”). Plaintiffs never had the right to buy the Properties from the Joint
28 Venture, have never been the rightful owners of the Joint Venture Properties, and

1 certainly were not the owners after Plaintiffs sold the Properties to the Buyers in
2 November 2016. Defendants' filing of yet another frivolous complaint was an attempt
3 to thwart the rightful sale and to further injure Plaintiffs, whose indemnity obligations
4 under the Purchase and Sale Agreement were triggered by Defendants' sham lawsuit.

5 178. Upon the sale of the Joint Venture Properties, Defendants were informed
6 of the sale and NMS Properties was once again told it was terminated. That
7 termination was provided for immediately upon sale, and AEW had the sole discretion
8 to cause that sale to take place. NMS Properties and the other Defendants, however,
9 refused to vacate the Joint Venture Properties and wrote to the tenants of the Joint
10 Venture Properties on or around November 23, 2016 by First Class mail through the
11 U.S. Postal Service and, upon information and belief, email, telling the tenants that the
12 Joint Venture Properties were not sold and that all rent should continue to be paid to
13 NMS Properties. Specifically, the letter misrepresented that:

14 We are writing to confirm that there has been no change in Landlord or
15 obligations to Landlord as per your current lease agreement.
16 Additionally, NMS Properties, Inc. remains the property manager
servicing your property.

17 Defendants intended for the tenants to rely upon those false representations in order to
18 induce the tenants to pay their rent to Defendants rather than to the Buyers.

19 179. The tenants relied on those false representations and paid their rent in
20 December 2016 and January 2017 to Defendants rather than to the Buyers, thereby
21 stealing millions of dollars' worth of rent from the Buyers, for which certain Plaintiffs
22 must now indemnify the Buyers.

23 **CLAIMS FOR RELIEF**

24 **FIRST CLAIM FOR RELIEF**

25 **(Violations of RICO, 18 U.S.C. § 1962(c))**

26 **(All Plaintiffs As Against Defendant Neil Shekhter)**

27 180. Plaintiffs reallege and incorporate herein by reference each and every
28 foregoing paragraph of this Complaint as if set forth in full.

181. At all relevant times, Plaintiffs were “persons” within the meaning of 18 U.S.C. §§ 1961(3) and 1964(c).

182. At all relevant times, Defendant Neil Shekhter was a “person” within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

A. The RICO Enterprise

183. Defendants Neil Shekhter, Margot Shekhter, NMS Properties, NMS Capital, and the Non-Party Co-Conspirators are a group of persons associated together for the common purpose of carrying out an ongoing criminal enterprise through a multi-faceted campaign of forgeries, lies, threats, and sham lawsuits for the purpose of coercing Plaintiffs into paying millions of dollars to Defendants or, alternatively, destroying Plaintiffs’ business by interfering with their contracts and economic relationships.

184. Defendants and their Co-Conspirators have organized their operation into a cohesive group with specific and assigned responsibilities and a clear command structure. While the organization of the criminal enterprise has changed over time, and its members may have held different roles at different times, the criminal enterprise has generally been structured to operate as a continuing unit in order to accomplish the goals of their criminal enterprise:

- a. Neil Shekhter has orchestrated and overseen the scheme to defraud and extort Plaintiffs, and has directed Defendants and the Non-Party Co-Conspirators to accomplish the overall aims of the criminal enterprise—namely, forging documents, disseminating the forged documents, filing sham lawsuits, destroying evidence, spreading false and misleading information to third parties, and systematically obstructing Plaintiffs’ business and efforts to uncover Defendants’ wrongdoing.
- b. Defendant Margot Shekhter authorized and participated in the filing and continued prosecution of the sham Lincoln Studios Litigation notwithstanding having repeatedly been put on notice that “Version 2” of

1 the JVA was a forgery and fabrication. In fact, Defendant Margot
2 Shekhter verified discovery responses in the Lincoln Studios Litigation
3 where she claimed that the forged “Version 2” was enforceable, after
4 having repeatedly been put on notice of its fabrication.

- 5 c. Defendants NMS Properties and NMS Capital have authorized and
6 participated in filing and prosecuting the sham lawsuits, forging of
7 documents, disseminating the forged documents, destroying evidence,
8 spreading false and misleading information to third parties, and
9 systematically obstructing Plaintiffs’ business and efforts to uncover
10 Defendants’ wrongdoing.
- 11 d. Non-Party Co-Conspirators Adam Shekhter, Alan Shekhter, Enrique
12 Sanchez, Brian Bowis, and Eddie Valentin have been responsible for
13 creating the forgeries and/or destroying evidence of their creation.
- 14 e. Non-Party Co-Conspirators Miller and Zelig have been responsible for
15 prosecuting the sham lawsuits in California state court, disseminating
16 copies of the forged documents to courts and other third parties, and
17 spreading false and misleading information to third parties in an attempt
18 to cripple Plaintiffs financially.

19 185. Defendants and the Non-Party Co-Conspirators constitute an associated-
20 in-fact enterprise within the meaning of 18 U.S.C. §§ 1961(4) and 1962(c), referred to
21 hereinafter as the “Enterprise.”

22 186. At all relevant times, Neil Shekhter participated in the operation and
23 management of the Enterprise.

24 187. At all relevant times, the Enterprise was engaged in, and its activities
25 affected, interstate and foreign commerce within the meaning of 18 U.S.C. § 1962(c).

26 **B. The Pattern of Racketeering Activity**

27 188. Neil Shekhter conducted or participated in, directly or indirectly, the
28 conduct, management, and operation of the Enterprise’s affairs through a “pattern of

1 racketeering activity” within the meaning of 18 U.S.C. § 1961(5) and in violation of 18
2 U.S.C. § 1962(c), to wit, he has continuously and regularly committed multiple and
3 related acts of racketeering activity since at least 2013 and continuing to the present.
4 Defendants Margot Shekhter, NMS Properties, NMS Capital, and Non-Party Co-
5 Conspirators agreed to commit multiple acts. Those multiple acts shared a common or
6 related purpose, goal, result, participant, victim, and method of commission and
7 extended over a substantial period of time, which are described below:

8 **1. Attempted Extortion in Violation of the Hobbs Act, 18 U.S.C.**
9 **§ 1951**

10 189. At all relevant times, Plaintiffs were engaged in interstate and foreign
11 commerce and in an industry that affects interstate and foreign commerce.

12 190. As described herein, Neil Shekhter has engineered a massive campaign of
13 lies, forgeries, threats, and sham lawsuits, and demanded the sale of AEW’s interest in
14 the Joint Venture at a substantial discount, and demanded payment of millions of
15 dollars, to bring about the cessation of these activities, all with the intent and effect of
16 causing and instilling a reasonable fear of economic loss on the part of Plaintiffs.

17 191. As described herein, Neil Shekhter has forged and fabricated documents
18 and/or directed others to forge and fabricate documents, destroyed evidence and/or
19 directed others to destroy evidence, and committed perjury and/or directed others to
20 commit perjury, and relied on the forged documents, spoliated evidence, and perjurious
21 testimony in the sham Lincoln Studios Litigation with the intent and effect of causing a
22 reasonable fear of economic loss on the part of Plaintiffs.

23 192. As described herein, Neil Shekhter has conspired with Margot Shekhter,
24 NMS Properties, and NMS Capital to advance objectively baseless claims against
25 Plaintiffs in the sham Lincoln Studios Litigation for the improper purpose of extorting
26 the sought-after Joint Venture membership interest and payments from Plaintiffs.

27 193. As described herein, Neil Shekhter has forged and fabricated documents
28 and/or directed others to forge and fabricate documents, destroyed evidence and/or

1 directed others to destroy evidence, and committed perjury and/or directed others to
2 commit perjury, and relied on the forged documents, spoliated evidence, and perjurious
3 testimony in the Property Management Litigation with the intent and effect of causing
4 a reasonable fear of economic loss on the part of Plaintiffs. Through his wrongful
5 conduct, Shekhter has deprived the Property Management Litigation of its legitimacy.

6 194. As described herein, Neil Shekhter has conspired with Margot Shekhter,
7 NMS Properties, and NMS Capital to advance objectively baseless claims against
8 Plaintiffs in the sham copycat lawsuits pursuant to a policy of starting legal
9 proceedings without regard to their merits and for the improper purpose of extorting
10 the sought-after Joint Venture membership interest and payments from Plaintiffs.

11 195. Neil Shekhter's wrongful conduct intended to induce, and did induce, a
12 reasonable fear in Plaintiffs that Defendants will, among other things: (1) continue to
13 spread false and misleading information to third parties, including by, among other
14 things, disseminating the forged documents and baselessly disputing Plaintiffs'
15 contractual rights, unless and until Plaintiffs "settle" the sham lawsuits or otherwise
16 give in to Neil Shekhter's baseless demands; (2) continue to litigate the sham Lincoln
17 Studios Litigation; and (3) continue to file and pursue sham lawsuits against Plaintiffs
18 based on the forged documents. As described herein, these actions have created a
19 reasonable fear on the part of Plaintiffs, including fear of economic loss.

20 196. Accordingly, Neil Shekhter has unlawfully obstructed, delayed, and
21 affected—and attempted to obstruct, delay, and affect—commerce as that term is
22 defined in 18 U.S.C. § 1951, by extortion, as that term is defined in § 1951, in that Neil
23 Shekhter attempted to induce Plaintiffs to consent to the relinquishment of AEW's
24 interest in the Joint Ventures and/or the Properties through the wrongful use of actual
25 or threatened force, violence, and fear—including fear of economic harm.

26 **2. Mail and Wire Fraud in Violation of 18 U.S.C. §§ 1341, 1343**

27 197. As described herein, Neil Shekhter has engaged, and continues to engage,
28 in a wide-ranging scheme or artifice to defraud Plaintiffs, various courts of law, and

multiple third parties, including banks, title insurance companies, and potential buyers of the Properties, regarding the authenticity of the forgeries, and the genuineness of the operative JVA and the validity of Plaintiffs' rights thereunder. The ultimate objective of the scheme or artifice to defraud was and is to coerce Plaintiffs into making a multi-million-dollar payment that would directly benefit Neil Shekhter and his co-defendants and co-conspirators.

198. In furtherance of the scheme, and as described herein, Shekhter repeatedly used the mails and wires in furtherance of a fraudulent scheme with the object of obtaining money or property, in violation of 18 U.S.C. § 1341 (mail fraud) and § 18 U.S.C. § 1343 (wire fraud). Neil Shekhter and his co-defendants and co-conspirators used the mails or wires to transmit the forgeries and false and misleading representations regarding the forgeries and the operative JVA and Plaintiffs' rights thereunder. Specifically:

- a. On or about July 12, 2013, Shekhter forwarded his son Adam Shekhter an email attaching PDFs of the original, executed JVA and the JVA as amended by the Specified Properties Amendments. On information and belief, Shekhter used one of these PDFs as the basis for the forged "Version 2."
- b. On or about July 15, 2013, Adam Shekhter emailed the forged "Version 2," which was printed and then scanned at the NMS offices to eliminate compromising metadata, to Neil Shekhter.
- c. On or about July 18, 2013, Shekhter emailed the forged "Version 2" to Andrew Lucca, located in Arizona, and James Prouty, representatives of KeyBank, the federally insured lender for one of the Joint Venture's Properties. In the email, Shekhter falsely represented that the forgery "is the version that I have executed in September 2010." Shekhter knew "Version 2" was not the version he executed in September 2010 because he and his son had fabricated it days earlier.

- 1 d. On or about July 19, 2013, Williford emailed Gibson Dunn the forged
2 “Version 2,” which he described as the “last version of the LLC
3 Agreement that was approved by Neil [Shekhter], which was sent hard
4 copy to our offices in September 2010 – with the buy-sell permitted after
5 3 years, which is consistent with the executed term sheet and the
6 conversations of NMS and AEW over the last three years.” This
7 statement was false and misleading, as Shekhter—who ghost wrote the
8 email—knew because he and his son Adam Shekhter fabricated the forged
9 “Version 2” only days earlier.
- 10 e. On or around November 18, 2013, in an email to Samek copying
11 Williford, Margot Shekhter, and other NMS executives, Shekhter claimed
12 that the January 2011 slipsheet pages containing the Specified Properties
13 Amendments were not valid. In this email, Shekhter claimed “I recently
14 discovered that there are multiple copies of the LLC Agreement . . . that
15 contain different terms” and “[a]pparently, the prior law firm for AEW
16 ‘slipped’ pages into an iteration without my authorization.” Shekhter
17 knew these statements were false and misleading because he and his son
18 Adam Shekhter fabricated the only version of the JVA containing a 3-year
19 Buy/Sell Provision.
- 20 f. On or around April 21, 2015, the Lincoln Studios Plaintiffs filed the FAC
21 in the Lincoln Studios Litigation alleging that the forged “Version 2” was
22 the operative JVA. On or around April 30, 2015, Zelig emailed the FAC
23 to Gibson Dunn, and, on information and belief, around this time period,
24 Defendants and their Co-Conspirators forwarded it to various lenders and
25 third parties with the intention that the third parties would rely upon the
26 false allegations and forged “Version 2” to the detriment of Plaintiffs. On
27 information and belief, the FAC was also sent to counsel for certain of the
28 other defendants in the Lincoln Studios Litigation through email and the

- 1 U.S. Postal Service on or about April 21, 2015. Defendants knew the
2 forged “Version 2” was not the operative JVA because they forged it and
3 because NMS’s own counsel informed them it was not the operative JVA.
- 4 g. On or around June 19, 2015, Shekhter submitted a perjurious declaration
5 in the Property Management Litigation which attached and purported to
6 authenticate the forged “Version 2” JVA. On or about June 22, 2015,
7 Miller and Zelig, counsel for NMS, acting on behalf of NMS Properties,
8 caused the perjurious declaration to be sent through the U.S. Postal
9 Service and facsimile to AEW’s counsel at Gibson Dunn. Shekhter knew
10 the forged “Version 2” was not authentic because he and his son Adam
11 Shekhter fabricated it in July 2013.
- 12 h. At or around 9:00 a.m. on June 24, 2015, Shekhter emailed the initial
13 botched forgery of the La Cienega PMA to his counsel with the intent that
14 the forgery be relied upon in the *ex parte* notice and application being
15 prepared by his counsel in the Property Management Litigation. At or
16 around 10:00 a.m. that same morning, Shekhter’s counsel gave *ex parte*
17 notice via email to Gibson Dunn of their intention to appear *ex parte* the
18 next morning, in reliance on the botched forgery of the La Cienega PMA,
19 with the intention to seek relief from the court based on the forgery.
20 Shekhter knew the botched forgery was a botched forgery because he
21 fabricated it that very morning.
- 22 i. On or around 11:22 p.m. on June 24, 2015, after realizing his mistake in
23 creating the botched La Cienega PMA, Shekhter emailed himself the
24 corrected forged La Cienega PMA, intending that it be relied upon in the
25 Property Management Litigation. It was this version of the forged La
26 Cienega PMA that was filed the following day. Shekhter knew the forged
27 La Cienega PMA was a forgery because he forged it.
28

- 1 j. On or around July 9, 2015, Shekhter submitted a supplemental declaration
2 in the Property Management Litigation reaffirming the forgery and
3 elaborating his perjurious story behind the forgery, falsely declaring “I did
4 have discussions with the Investor Member about having a no-less-than
5 60-day termination provision for La Cienega” and “the Investor Member
6 agreed to a termination period to [sic] 60 days.” On or around July 9,
7 2015, Shekhter’s counsel emailed Shekhter’s July 9, 2015 declaration to
8 Gibson Dunn. Shekhter knew these statements were false and misleading
9 because he forged the La Cienega PMA for the very purpose of altering
10 the 30-day termination period in the existing PMAs.
- 11 k. On or about September 10, 2015, Shekhter, NMS Capital, and the other
12 Lincoln Studios Plaintiffs filed a Second Amended Complaint (“SAC”) in
13 the Lincoln Studios Litigation, emailed a copy to Gibson Dunn and
14 counsel for other defendants in the Lincoln Studios Litigation, and mailed
15 a copy through the U.S. Postal Service to the same. In the SAC,
16 Defendants continued to advance and rely upon “Version 2,” knowing it
17 was a forgery.
- 18 l. On or about September 28, 2015, Shekhter submitted a perjurious
19 declaration in the Lincoln Studios Litigation. Specifically, in Paragraph
20 13, Shekhter stated that “‘Version 1’ [the original executed JVA]
21 appeared not to allow for a buy-sell until after year five, instead of after 3
22 years,” that Shekhter “brought this to Mr. Samek’s attention,” and that
23 Samek “acknowledged that the provision was inaccurate and he would
24 correct same.” Shekhter stated that “Version 2 arrived at my office
25 accompanied by a letter (on ‘AEW’ letterhead, signed by Mr. Samek)
26 dated September 14, 2010.” In Paragraph 14, Shekhter stated that he
27 “carefully maintained the original hard copies of Version 2 and Mr.
28 Samek’s September 14, 2010 cover letter for it.” The sworn statements

1 were knowingly false and misleading. Shekhter knew “Version 2” was
2 not hand delivered to him in September 2010 because he and his son
3 fabricated it in July 2013. On or about September 28, 2015, Miller and
4 Zelig, acting on behalf of Shekhter, NMS Capital, and the other Lincoln
5 Studios Plaintiffs, caused the perjurious declaration to be mailed through
6 the U.S. Postal Service to Gibson Dunn and counsel for other defendants
7 in the Lincoln Studios Litigation.

- 8 m. On or about January 13, 2016, Shekhter, NMS Capital, and the other
9 Lincoln Studios Plaintiffs filed a Third Amended Complaint (“TAC”),
10 continuing to advance and rely upon “Version 2.” These allegations were
11 knowingly false and misleading. On or about January 13, 2016, Miller
12 and Zelig, acting on behalf of Shekhter, NMS Capital, and the other
13 Lincoln Studios Plaintiffs, caused the TAC to be emailed and mailed
14 through the U.S. Postal Service to Gibson Dunn and, on information and
15 belief, to counsel for other defendants in the Lincoln Studios litigation.
- 16 n. On or about January 19, 2016, Shekhter submitted another perjurious
17 declaration in the Lincoln Studios Litigation, again relying on the forged
18 “Version 2.” Specifically, in Paragraphs 11 and 12 of the declaration,
19 Shekhter stated: “Once I received the full version of the JVA, I saw that
20 Section 11 granted a ‘Buy/Sell’ right five years after formation of the
21 Joint Venture, as opposed to three years to which we agreed. I brought
22 the error to Mr. Samek’s attention, and Mr. Samek said that he would fix
23 it. Mr. Samek fixed the mistake and sent me “Version 2” of the
24 JVA” These sworn statements were knowingly false and misleading.
25 Shekhter knew that Samek did not send “Version 2” in 2010 because he
26 and his son Adam Shekhter fabricated it in July 2013. On or about
27 January 19, 2016, Miller, acting on behalf of Shekhter, NMS Capital, and
28 the other Lincoln Studios Plaintiffs, caused the perjurious declaration to

1 be sent via overnight delivery to Gibson Dunn and, on information and
2 belief, to counsel for other Lincoln Studios Defendants.

- 3 o. On or about January 27, 2016, Shekhter submitted another perjurious
4 declaration in the Lincoln Studios Litigation, again relying on the forged
5 “Version 2.” Specifically, in Paragraphs 7 and 8 of the declaration,
6 Shekhter stated: “Once I received the full version of the JVA, I saw that
7 Section 11 granted a ‘Buy/Sell’ right five years after formation of the
8 Joint Venture, as opposed to three years to which we agreed. I brought
9 the error to Mr. Samek’s attention, and Mr. Samek said that he would fix
10 it. Mr. Samek fixed the mistake and sent me Version 2 of the JVA”
11 These sworn statements were knowingly false and misleading for the
12 same reasons set forth above. On or about January 27, 2016, Miller,
13 acting on behalf of Shekhter, NMS Capital, and the other Lincoln Studios
14 Plaintiffs, caused the perjurious declaration to be emailed and mailed
15 through the U.S. Postal Service to Gibson Dunn.
- 16 p. On or about June 21, 2015, Shekhter emailed himself one version of the
17 forged Cover Letter. Shekhter knew the forged Cover Letter was a
18 forgery because he fabricated it. Forensic evidence established that while
19 the metadata associated with the PDF of the forged Cover Letter Shekhter
20 sent himself indicated the PDF was created on “September 21, 2010,” the
21 software used to create that PDF did not exist until December 2014, four
22 years later.
- 23 q. At or about 12:17 a.m. on September 9, 2015, Shekhter sent the forged
24 Cover Letter to Terra Andersen, an NMS Properties employee, asking if
25 she “can tell when the original was taken or scanned.” Shekhter sent the
26 forged Cover Letter knowing full well it was a forgery—and not an
27 original—because he fabricated it.
- 28

- 1 r. At or about 8:34 a.m. on September 18, 2015, Shekhter sent an email to
2 Enrique Sanchez, IT Administrator of NMS, asking him to “[p]lease take
3 a look at metadata” and attaching three PDF versions of the forged Cover
4 Letter. Shekhter sent the forged Cover Letter knowing full well it was
5 forgery—and not an original—because he fabricated it.
- 6 s. On or about September 28, 2015, Shekhter submitted a declaration
7 attaching and purporting to authenticate a copy of the forged Cover Letter.
8 These statements were false and misleading. Shekhter knew the forged
9 Cover Letter was not authentic because he fabricated it. On or about
10 September 28, 2015, Miller and Zelig, acting on behalf of Shekhter, NMS
11 Capital, and the other Lincoln Studios Plaintiffs, caused the perjurious
12 declaration to be mailed through the U.S. Postal Service to Gibson Dunn
13 and, on information and belief, to counsel for other defendants in the
14 Lincoln Studios Litigation.
- 15 t. On or about September 17, 2015, Shekhter, Margot Shekhter, and NMS
16 Capital verified supplemental interrogatory responses in the Lincoln
17 Studios Litigation (“Responses”). On or about September 17, 2015,
18 Zelig, acting on behalf of Shekhter, Margot Shekhter, and NMS Capital,
19 caused the Responses to be sent by email from Zelig to Gibson Dunn. On
20 or about October 1, 2015, Zelig caused the Responses to be sent by U.S.
21 Mail to Gibson Dunn. The Responses further rely upon the forged
22 “Version 2,” despite the fact that Shekhter created the forgery and after
23 having repeatedly been put on notice of its fabrication. In fact, Shekhter,
24 Margot Shekhter, and NMS Capital purport to attach “a true and correct
25 copy of Version 2” as an exhibit to the Responses.
- 26 u. On or about February 23, 2016, Shekhter submitted yet another perjurious
27 declaration in the Lincoln Studios Litigation. Specifically, in Paragraph
28 26 of the declaration, Shekhter stated: “Once I received the full version of

- 1 the JVA, I saw that Section 11 granted a ‘Buy/Sell’ right five years after
2 formation of the Joint Venture, as opposed to three years to which we
3 agreed. I spoke with Mr. Samek on or shortly before September 14, 2010
4 and brought the error to Mr. Samek’s attention. He acknowledged that the
5 provision was inaccurate and said he would fix it by changing Section
6 11’s Buy/Sell from a 5-year term to a 3-year term.” In Paragraph 28,
7 Shekhter stated: “Mr. Samek fixed the mistake in ‘Version 1’ and sent me
8 ‘Version 2’ of the JVA” Shekhter attached the forged “Version 2” to
9 his February 23, 2016 declaration. Shekhter knew these statements were
10 false and misleading because he forged “Version 2” in July 2013. On or
11 about February 23, 2016, Miller and Zelig, acting on behalf of Shekhter,
12 NMS Capital, and the other Lincoln Studios Plaintiffs, caused the
13 perjurious declaration to be sent via overnight delivery to Gibson Dunn.
- 14 v. On or about March 16, 2016, Miller, on behalf of Neil Shekhter, NMS
15 Properties, and NMS Capital, sent a letter via email and certified mail
16 through the U.S. Postal Service to representatives of PwC, AEW CM and
17 AEW P6’s auditor, and Goodwin, the Joint Venture and Subsidiary
18 Companies’ tax preparer, both located in the State of Massachusetts,
19 attaching a copy of the TAC in the sham Lincoln Studios Litigation. In
20 the letter, Miller represented to PwC and Goodwin that the knowingly
21 false and misleading “information” in the TAC “is critical to your audit,”
22 and “should be reflected in PwC’s audit and in Goodwin’s financial and
23 tax reporting.” Defendants knew these statements were misleading
24 because they knew “Version 2” was a forgery and fabrication, and
25 therefore was not “critical” to any audit and should not have been
26 “reflected” in any audit or financial and tax reporting.
- 27 w. On or about March 28, 2016, Miller, on behalf of Neil Shekhter, NMS
28 Properties, and NMS Capital, sent a letter via email and certified mail

1 through the U.S. Postal Service to representatives of various Joint Venture
2 lenders, Comerica Bank, KeyBank, Berkadia Commercial Mortgage LLC
3 (located in Virginia), PNC Bank, NA, and PNC Real Estate. In the letter,
4 Miller falsely represented that Neil Shekhter “did not forge anything” and
5 that “Samek . . . created [Version 2] and sent it to Mr. Shekhter”—
6 statements that Defendants knew to be false because they knew
7 “Version 2” was a forgery.

- 8 x. On or about June 2, 2016, Miller, on behalf of Neil Shekhter, NMS
9 Properties, and NMS Capital, sent a letter via email and certified mail
10 through the U.S. Postal Service to representatives of the Listing Agent. In
11 the letter, Miller falsely represented that “AEW has no right, or authority,
12 to engage you and your company to market this portfolio,” and threatened
13 to “hold [the Listing Agent and its representatives] responsible and liable
14 for interference . . . , exposing you to in excess of \$500 million in
15 damages.” Miller also demanded that the Listing Agent “inform any
16 prospective purchasers about,” *inter alia*, the sham Lincoln Studios
17 Litigation and “NMS’ claims” therein. Defendants knew these statements
18 were false and misleading because they knew the sham Lincoln Studios
19 Litigation and NMS’ claims therein were predicated on a forgery.
- 20 y. On or about June 24, 2016, Shekhter sent the Investor Member, AEW
21 CM, and DLA a purported “Buy/Sell Offer Notice Pursuant to Section 11
22 of the JVA, dated September 8, 2010” (the “Alleged Notice”). In the
23 Alleged Notice, Shekhter, on behalf of NMS Capital, purported to
24 “provide[] notice of [its] exercise of its Buy/Sell offer in the amount of
25 US \$500 million” “[p]ursuant to Section 11.1” of the JVA. This Alleged
26 Notice was sent by email and certified mail through the U.S. Postal
27 Service to the Investor Member in Massachusetts, AEW CM, and the
28 former attorneys for the Investor Member, also located in Massachusetts.

1 The Alleged Notice was sent in furtherance of the fraudulent scheme,
2 designed to thwart a potential sale.

3 z. On or about June 29, 2016, Miller, on behalf of NMS Properties and NMS
4 Capital, sent a letter via email and certified mail through the U.S. Postal
5 Service to three representatives of Invesco, Potential Buyer No. 1,
6 attaching a copy of Defendants' knowingly false and misleading
7 complaint in the sham Lincoln Studios Litigation. Two of the
8 representatives are located in Georgia. Miller also sent a copy to a
9 representative of Gibson Dunn, a representative of AEW CM, and an
10 attorney for the Listing Agent in New York. In the letter, Miller falsely
11 represented that "AEW has no right to sell, transfer, assign, hypothecate
12 or otherwise encumber all or any part of the JV Properties," and that
13 "AEW's interest in the Joint Venture [is] zero." In addition, Miller
14 misleadingly described the TAC as the "operative complaint," and
15 purported to put Potential Buyer No. 1 on notice that his clients will hold
16 it "responsible for interference and conspiracy, exposing your
17 organization[] to over \$500 million in damages," if it does not
18 "immediately cease and desist from interfering with the contractual rights
19 of our clients by attempting to purchase the JV Portfolio."

20 aa. On or about June 29, 2016, Miller, on behalf of NMS Capital and NMS
21 Properties, sent another letter via email and certified mail through the U.S.
22 Postal Service to representatives of First American Title Insurance
23 Company, Fidelity National Financial in Florida, Stewart Title Insurance
24 Guaranty in Texas, Old Republic Insurance Company, North American
25 Title Insurance Company, Chicago Title Insurance Company, Investors
26 Title Company in Illinois, Land America Financial Group, Attorney's
27 Title Insurance Funds, Inc. in North Carolina, Lawyer's Title Insurance
28 Corporation in Nebraska, Westcor Land Title Company, Ticor Title,

1 United General Title Insurance Company, and Commonwealth Land Title
2 Insurance Company, which together constituted most if not all of the
3 major title insurance companies in the United States, attaching a copy of
4 Defendants' knowingly false and misleading complaint in the sham
5 Lincoln Studios Litigation. Miller also sent a copy to an attorney for the
6 Listing Agent located in New York. In the letter, Miller falsely
7 represented that "AEW has no right to sell, transfer, assign, hypothecate
8 or otherwise encumber all or any part of the JV Properties," and that
9 "AEW's interest in the Joint Venture [is] zero." In addition, Miller
10 misleadingly described the TAC as the "operative complaint," and
11 purported to put the Prospective Title Insurers on notice that "NMS will
12 hold [them and their representatives] responsible and liable for . . .
13 potentially hundreds of millions in compensatory and punitive damages"
14 if they "provide title insurance for, facilitate, or in any way participate in
15 the sale of the JV Properties."

16 bb. On or about June 30, 2016, Miller, on behalf of NMS Capital and NMS
17 Properties, sent a letter via email and certified mail through the U.S.
18 Postal Service to representatives of Douglas Emmett, another potential
19 buyer of the Joint Venture's portfolio of Properties ("Potential Buyer No.
20 2"), attaching a copy of Defendants' knowingly false and misleading
21 complaint in the sham Lincoln Studios Litigation. Miller also sent a copy
22 to an attorney for the Listing Agent located in New York. In the letter,
23 Miller falsely stated that "AEW has no right to sell, transfer, assign,
24 hypothecate or otherwise encumber all or any part of the JV Properties."
25 In addition, Miller misleadingly described the TAC as the "operative
26 complaint," and purported to put Potential Buyer No. 2 on notice that it
27 "could face legal exposure and liability to our clients for hundreds of
28 millions of dollars in compensatory and punitive damages for interfering

1 with our clients' contractual rights and prospective economic benefit," if
2 it "continues its efforts to purchase the JV Properties."

3 cc. On or about June 30, 2016, Miller, on behalf of Neil Shekhter, NMS
4 Properties, and NMS Capital, also sent a letter via email and certified mail
5 through the U.S. Postal Service to three executives with Equity
6 Residential ("Potential Buyer No. 3"), another potential buyer of the Joint
7 Venture's portfolio of properties, attaching a copy of Defendants'
8 knowingly false and misleading complaint in the sham Lincoln Studios
9 Litigation. Miller also sent a copy to an attorney for the Listing Agent
10 located in New York. In the letter, Miller falsely stated that "AEW has no
11 right to sell, transfer, assign, hypothecate or otherwise encumber all or
12 any part of the JV Properties," and purported to put Potential Buyer No. 3
13 and its executives on "notice that you and your company could face legal
14 exposure and liability to our clients for hundreds of millions of dollars in
15 compensatory and punitive damages for interfering with our clients'
16 contractual rights and prospective economic benefit." Miller further
17 warned that "if Equity Residential continues its efforts to purchase the JV
18 Properties, our clients will hold Equity Residential responsible for this
19 interference, exposing you and your company to over \$500 million in
20 damages."

21 dd. On or about July 26, 2016, Miller, on behalf of NMS Properties, NMS
22 Capital, and Neil Shekhter, sent a letter via email and overnight mail
23 through Federal Express to representatives of KeyBank in Colorado and
24 Utah, attaching a copy of the knowingly false TAC in the sham Lincoln
25 Studios Litigation. In the letter, Miller disputed that "the extensions of
26 the Loans" were being done to facilitate the sale of the Properties, falsely
27 stating that "AEW has no right to sell, transfer, assign, hypothecate or
28 otherwise encumber all or any part of the JV Properties," and warning that

1 NMS “will sue any prospective purchaser that interferes with NMS’ rights
2 to purchase the Properties.”

3 ee. On or about November 23, 2016, NMS Properties sent a letter to the
4 tenants of the Joint Venture Properties by First Class mail through the
5 U.S. Postal Service and, upon information and belief, by email, telling the
6 tenants that the Joint Venture Properties had not been sold and that all rent
7 should continue to be paid to NMS Properties. Specifically, the letter
8 misrepresented that: “We are writing to confirm that there has been no
9 change in Landlord or obligations to Landlord as per your current lease
10 agreement. Additionally, NMS Properties, Inc. remains the property
11 manager servicing your property.” NMS Properties knew these
12 statements were false and misleading because the Joint Venture Properties
13 had been sold and because NMS Properties had been terminated.

14 199. Each use of the mails or wires in furtherance of the fraudulent scheme
15 constitutes a separate act of mail or wire fraud and thus a predicate act for purposes of
16 RICO.

17 200. Shekhter participated in the scheme or artifice to defraud knowingly,
18 willfully, and with the specific intent to deceive and/or defraud Plaintiffs into
19 conveying their Joint Venture membership interests to and paying money to
20 Defendants. Shekhter knowingly and intentionally forged and fabricated “Version 2”
21 of the JVA, the La Cienega PMA, and the Cover Letter, knowingly and intentionally
22 disseminated the forgeries to courts and third parties, and knowingly and intentionally
23 disseminated false and misleading representations regarding the forgeries and the
24 operative JVA and Plaintiffs’ rights thereunder with the intent that Plaintiffs would
25 rely on them to their detriment. Shekhter knowingly engaged in the aforementioned
26 conduct with the intent to generate fear in Plaintiffs such that Plaintiffs would
27 ultimately be forced to convey their Properties and pay money to Defendants.
28

1 **3. Bank Fraud in Violation of 18 U.S.C. § 1344**

2 201. As described herein, as part of the scheme or artifice to defraud, Neil
3 Shekhter emailed the forged “Version 2” JVA, and made false and misleading
4 representations regarding the forged JVA, to representatives of KeyBank with the
5 specific intent that it would rely on the forged “Version 2” JVA and Shekhter’s false
6 and misleading representations regarding the forged JVA to its detriment and/or
7 Plaintiffs’ detriment, for the purpose of obtaining financing from KeyBank.

8 Specifically:

- 9 a. On July 18, 2013, just three days after forging “Version 2,” Shekhter
10 emailed a copy of the forged “Version 2” to Andrew Lucca, in Arizona,
11 and James Prouty of KeyBank, the federally insured lender for one of the
12 Joint Venture’s Properties. In the email, Shekhter falsely represented that
13 the forgery “is the version that I have executed in September 2010.” Of
14 course, Shekhter knew the document attached to his email (“P6 LA MF
15 Holdings I LLC 2 v.2.pdf”) was a forgery and not what he executed in
16 September 2010 because he and his son Adam had forged “Version 2”
17 only days earlier.
- 18 b. On or about March 28, 2016, Miller, on behalf of Shekhter, NMS
19 Properties, and NMS Capital, sent a letter via email and certified mail
20 through the U.S. Postal Service to representatives of KeyBank as well as
21 other third-party lenders, falsely representing that Neil Shekhter “did not
22 forge anything” and that “Samek . . . created [Version 2] and sent it to Mr.
23 Shekhter”—statements that Defendants knew to be false.
- 24 c. On or about July 18, 2016, Samek of AEW sent a letter to KeyBank,
25 asking that the bank extend the maturity dates of three loans relating to
26 the Joint Venture’s Properties at 1420 5th Street, 9901 Washington
27 Boulevard, and 1430 5th Street, in order to facilitate the sale of those
28 Properties. Shortly thereafter, on or about July 26, 2016, Miller, on behalf

1 of NMS Properties, NMS Capital, and Neil Shekhter, sent a letter via
2 email and overnight mail through Federal Express to representatives of
3 KeyBank in Colorado and Utah, attaching a copy of the knowingly false
4 TAC in the sham Lincoln Studios Litigation. In the letter, Miller disputed
5 that “the extensions of the Loans” were being done to facilitate the sale of
6 the Properties, falsely stating that “AEW has no right to sell, transfer,
7 assign, hypothecate or otherwise encumber all or any part of the JV
8 Properties,” and warning that NMS “will sue any prospective purchaser
9 that interferes with NMS’ rights to purchase the Properties.”

10 202. Upon information and belief, KeyBank is a financial institution as that
11 term is defined by 18 U.S.C. § 20.

12 203. Accordingly, Shekhter has knowingly executed, or attempted to execute, a
13 scheme or artifice to defraud a financial institution or to obtain moneys, funds, credits,
14 assets, securities, or other property owned by, or under the custody or control of, a
15 financial institution, in violation of 18 U.S.C. § 1344.

16 204. Plaintiffs have been and will continue to be injured in their business and
17 property by reason of Shekhter’s violations of 18 U.S.C. § 1962(c), in an amount to be
18 determined at trial. The injuries to Plaintiffs directly, proximately, and reasonably
19 foreseeably resulting from or caused by these violations of 18 U.S.C. § 1962(c)
20 include, but are not limited to, the lost profits that Plaintiffs incurred as a result of the
21 impairment and diminution in the purchase price of the Properties caused by
22 Defendants’ false and misleading statements, the default fees and interest that Plaintiffs
23 incurred as a result of the default caused by Defendants’ false and misleading
24 statements, and the attorneys’ fees and costs that Plaintiffs incurred in responding to
25 Defendants’ extortionate threats and fraudulent misrepresentations and omissions.

26 205. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover treble
27 damages plus attorneys’ fees and costs from Shekhter.

28 206. WHEREFORE, Plaintiffs pray for judgment as set forth below.

SECOND CLAIM FOR RELIEF

(Conspiracy to Violate RICO, Violation of 18 U.S.C. § 1962(d))

**(All Plaintiffs As Against Defendants Neil Shekhter, Margot Shekhter,
NMS Properties, and NMS Capital)**

207. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Complaint as if set forth in full.

208. Defendants have unlawfully, knowingly and willfully combined, conspired, confederated and agreed together and with others to violate 18 U.S.C. § 1962(c) as described above, in violation of 18 U.S.C. § 1962(d).

209. Upon information and belief, Defendants knew that they were engaged in a conspiracy to commit the predicate acts, and they knew that the predicate acts were part of such racketeering activity, and the participation and agreement of each of them was necessary to allow the commission of this pattern of racketeering activity. This conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d).

210. Upon information and belief, Defendants agreed to conduct or participate, directly or indirectly, in the conduct, management, or operation of the Enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c).

211. Each Defendant knew about and agreed to facilitate the Enterprise's scheme to obtain money or property from Plaintiffs. It was part of the conspiracy that Defendants and their Co-Conspirators would commit a pattern of racketeering activity in the conduct of the affairs of the Enterprise, including the acts of racketeering set forth in paragraphs 189-204, *supra*.

212. As a direct and proximate result of Defendants' conspiracy, the acts of racketeering activity of the Enterprise, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Plaintiffs have suffered significant injuries including, but not limited to: millions of dollars spent defending against Defendants' extortionate threats, fraudulent misrepresentations and omissions, and

1 frivolous lawsuits; millions of dollars spent mitigating the business impact of
2 Defendants' pervasive misconduct, such as default interest on loans which Defendant
3 caused the default of; tens of millions of dollars in lost sale proceeds for the Joint
4 Venture assets; and harm to their reputation and business interests as a result of the
5 continuous frivolous litigation and Defendants' many misleading and fraudulent
6 communications to third-party lenders, auditors, property managers, title insurance
7 companies, investors, potential buyers and countless others.

8 213. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover treble
9 damages plus attorneys' fees and costs from Defendants.

10 214. WHEREFORE, Plaintiffs pray for judgment as set forth below.

11 **THIRD CLAIM FOR RELIEF**

12 **(Breach of Contract)**

13 **(AEW As Against Defendants Neil Shekhter and Margot Shekhter,**
14 **Individually And As Trustees Of The NMS Family Living Trust dated**
15 **September 3, 1991)**

16 215. Plaintiffs reallege and incorporate herein by reference each and every
17 foregoing paragraph of this Complaint as if set forth in full.

18 216. On or about September 8, 2010, Neil Shekhter, individually and on behalf
19 of the Trust, and Margot Shekhter, on behalf of the Trust, executed the Undertaking.

20 217. As part of the Undertaking, Neil Shekhter (the "Principal") and the Trust
21 (the "Trust" and, collectively with Neil Shekhter, the "Principals") agreed to
22 indemnify, defend and hold the Joint Venture and the Investor Member harmless from
23 and against any liability, loss, cost (including reasonable attorneys' fees) or damages
24 arising from:

25 (a) any fraud, willful misconduct, gross negligence or any intentional
26 misrepresentation of any material fact (including, but not limited to, the
27 representations and warranties set forth on Schedule 2.3(a) to the LLC
28 Agreement) by Operating Member or any Person controlling, controlled
by or under common control with Operating Member (any such Person, a
"Controlled Affiliate") in connection with the LLC Agreement, the
Company, a Subsidiary Company or with respect to any Property;

(b) any misappropriation or embezzlement of funds of the Company or any Property by Operating Member or any of its Controlled Affiliates;
(c) any act of intentional damage, arson or intentional physical waste of or to the Property by Operating Member or any of its Controlled Affiliates;
(d) actions taken, or omitted to be taken, with respect to the Company or the Property in bad faith on the part of Operating Member or any of its Controlled Affiliates;
(e) Operating Member, the Property Manager or the Developer Manager (as long as they are an Affiliate of Operating Member), a Principals, the Approved Substitute Principal or any of their respective Affiliates or Related Parties: (1) bringing or participating in, or acting in concert with others to bring, any voluntary or involuntary bankruptcy, liquidation, receivership or similar proceeding against the Subsidiary Company or the Company or any Member; (2) being listed as a petitioning creditor in any such proceeding; or (3) soliciting or causing to be solicited petitioning creditors for any such proceeding; and/or
(f) any Transfer of Operating Member's interest in the Company or of the Principals' indirect interest in the Company, in either case, in violation of the LLC Agreement.

218. Defendants Neil Shekhter and NMS Properties are "Controlled Affiliates" within the meaning of Paragraph 1 of the Undertaking.

219. Paragraph 7 of the Undertaking states that "[t]he Principals shall pay to Investor Member within ten (10) days after demand any and all actual and reasonable expenses, losses, costs or damages paid or incurred by Investor Member, including reasonable attorneys' fees and disbursements, as a result of a breach by the Principals of an obligation under this letter, together with interest at 12% per annum, but in no event at a rate which exceeds the highest rate permitted by applicable law, on any amounts owing under this letter from the date paid or incurred by Investor Member until paid by the Principals."

220. As described herein, NMS Capital and its "Controlled Affiliates" engaged in substantial misconduct constituting fraud, willful misconduct, gross negligence, intentional misrepresentation of material fact, misappropriation or embezzlement of Joint Venture funds, and acts or omissions in bad faith. NMS Capital and its "Controlled Affiliates" also brought, are still bringing, or participated in bringing proceedings seeking the destruction of the Joint Venture. These acts have caused liabilities, losses, costs, and damages to AEW.

1 221. On January 13, 2017, pursuant to and in compliance with Paragraph 7 of
2 the Undertaking, the Investor Member issued a demand letter (the “Undertaking
3 Demand”) demanding reimbursement of the actual and reasonable liability, expenses,
4 loses, costs or damages paid or incurred by the Investor Member and arising from the
5 fraud, willful misconduct, gross negligence, intentional misrepresentation of material
6 fact, misappropriation or embezzlement, and acts taken or omitted to be taken in bad
7 faith by the Operating Member and its Controlled Affiliates. The Undertaking
8 Demand required the Principals to reimburse the Investor Member for tens of millions
9 of dollars in damages, costs, fees, and liabilities incurred by the Investor Member in
10 the form of attorneys’ fees and costs, witness fees and costs, fees and expenses
11 reimbursed by the Investor Member to others, default interest on Joint Venture loans,
12 payroll expenses, management fees, and rent monies.

13 222. The letter required the Principals to pay \$17,984,912 in fees, costs,
14 damages, and liabilities already incurred and/or paid to date by the Investor Member
15 within 10 days of the Undertaking Demand and reserved the Investor Member’s right
16 to issue further demands as additional amounts are incurred. A true and correct copy
17 of the January 13, 2017 Undertaking Demand is attached hereto as **Exhibit 6**.

18 223. To date, as of January 23, 2017, more than 10 days after the issuance of
19 the Undertaking Demand, the Principals have not complied with the Undertaking
20 Demand, and have not provided the required indemnification.

21 224. The Principals’ failure to provide the required indemnification constitutes
22 a material breach of their obligations under the Undertaking.

23 225. As a direct and foreseeable result of the Principals’ breach of their
24 obligations under the Undertaking, AEW has suffered damages to which it is entitled,
25 plus interest at a rate of 12% per annum.

26 226. WHEREFORE, Plaintiffs pray for judgment as set forth below.
27
28

FOURTH CLAIM FOR RELIEF

**(Tortious Interference with Prospective Economic Advantage)
(All Plaintiffs As Against Defendants Neil Shekhter, NMS Properties
and NMS Capital)**

227. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Complaint as if set forth in full.

228. Defendants NMS Properties and NMS Capital were aware of Plaintiffs' prospective economic relationships with one or more of the Prospective Title Insurers.

229. Defendants NMS Properties and NMS Capital were aware of Plaintiffs' prospective economic relationships with one or more of the prospective lenders.

230. Defendants NMS Properties and NMS Capital were aware of Plaintiffs' prospective economic relationships with one or more of the Potential Buyers.

231. Defendants NMS Properties and NMS Capital intentionally caused the Prospective Title Insurers, the prospective lenders, and the Potential Buyers to terminate their prospective economic relationship with Plaintiffs. Defendants Neil Shekhter, NMS Properties and NMS Capital, through independently wrongful conduct consisting of, *inter alia*, false, misleading, and defamatory statements and omissions, induced the Prospective Title Insurers, the prospective lenders, and certain Potential Buyers not to consummate any economic relationships with Plaintiffs.

232. As a direct, proximate, and foreseeable result of this independently wrongful conduct, Plaintiffs lost the benefits of their potential relationships with the Prospective Title Insurers, prospective lenders, and certain Potential Buyers, causing millions of dollars in damages to Plaintiffs.

233. Defendants Neil Shekhter, NMS Properties and NMS Capital have engaged in malicious, willful, and fraudulent conduct in the commission of these independently wrongful acts, and because of the reprehensible nature of these acts, Plaintiffs are entitled to, and should be awarded, punitive damages against them.

234. WHEREFORE, Plaintiffs pray for judgment as set forth below.

FIFTH CLAIM FOR RELIEF

(Conversion)

**(Joint Venture and The Subsidiary Companies As Against Defendant
NMS Properties)**

235. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Complaint as if set forth in full.

236. Plaintiffs are the rightful owners and possessors of the Joint Venture's funds, including the rents derived from each of the Properties.

237. Plaintiffs are the rightful owners and possessors of the records pertaining to each of the Properties.

238. Defendant NMS Properties intentionally and substantially interfered with Plaintiffs' property by taking possession of the rents derived from each of the Properties, preventing Plaintiffs from having access to those rents, and/or refusing to transfer them to Plaintiffs after Plaintiffs demanded their transfer; and by refusing to render the records pertaining to each Property to Plaintiffs.

239. Plaintiffs did not consent to Defendant NMS Properties' conduct.

240. Plaintiffs were harmed by Defendant's conduct.

241. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

242. WHEREFORE, Plaintiffs pray for judgment as set forth below.

SIXTH CLAIM FOR RELIEF

(Slander of Title)

**(The Subsidiary Companies As Against Defendants Neil Shekhter,
NMS Properties and NMS Capital)**

243. Plaintiffs reallege and incorporate herein by reference each and every foregoing paragraph of this Complaint as if set forth in full.

244. Defendants Neil Shekhter, NMS Properties, and NMS Capital published statements that cast doubt upon and disparaging the Subsidiary Companies' ownership of the Properties, including statements to potential buyers and at least fourteen major

1 title insurance companies in the United States asserting that the Subsidiary Companies
2 had no right to sell the Properties and that the Subsidiary Companies' agent, AEW, had
3 no right to market the Properties for sale on their behalf.

4 245. The Subsidiary Companies did in fact own the Properties, and did in fact
5 have the right to market the Properties for sale, using AEW as their agent. Defendants'
6 statements were therefore false.

7 246. Defendants knew their statements to be untrue, and/or acted with reckless
8 disregard with respect to the truth or falsity as to whether their statements were true.

9 247. Defendants' publication of the false and slanderous statements was not
10 privileged.

11 248. Defendants recognized that others would act in reliance on their false
12 statements, causing the Subsidiary Companies' financial loss.

13 249. The Subsidiary Companies did in fact suffer immediate and direct
14 pecuniary loss, including in the form of the diminished purchase price for the
15 Properties and the attorneys' fees and costs reasonably and necessarily incurred in the
16 sham Lincoln Studios Litigation to remove the doubt cast upon the vendibility of the
17 Properties.

18 250. Defendants' conduct was a substantial factor in causing the Subsidiary
19 Companies harm.

20 251. WHEREFORE, Plaintiffs pray for judgment as set forth below.

21 **PRAYER FOR RELIEF**

22 **On the First and Second Claims for Relief:**

- 23 1. For general damages according to proof at trial, trebled according to
24 statute, 18 U.S.C. § 1964(c);
25 2. For pre-judgment interest according to statute; and
26 3. For Plaintiffs' reasonable attorney's fees and costs according to statute, 18
27 U.S.C. § 1964(c).
28

On the Third Claim for Relief:

1. For general damages according to proof at trial; and
2. For interest at a rate of 12% per annum.

On the Fourth Claim for Relief:

1. For general damages according to proof at trial; and
2. For punitive damages in an amount to be proven at trial.

On the Fifth Claim for Relief:

1. For general damages according to proof at trial; and
2. For punitive damages in an amount to be proven at trial.

On the Sixth Claim for Relief:

1. For general damages according to proof at trial; and
2. For punitive damages in an amount to be proven at trial.

Dated: January 25, 2017

GIBSON, DUNN & CRUTCHER LLP

By: /s/ James P. Fogelman
James P. Fogelman

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